No. 15843

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PETER CHAUNT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

LAUGHLIN E. WATERS,
United States Attorney,

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,

ARLINE MARTIN,
Assistant U. S. Attorney,

600 Federal Building,
Los Angeles 12, California,
Attorneys for Appellee.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

PAGE

TABLE OF AUTHORITIES CITED

CASES PAGE

PAGE

PAGE

REGULATIONS AND RULES

STATUTES PAGE

INDEX TO APPENDICES

No. 15843

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PETER CHAUNT,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

Jurisdiction.

The District Court had jurisdiction of the original complaint and the second amended complaint[1] to set aside and cancel naturalization pursuant to the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (8 U. S. C. 1451(a), 1952 Ed.).

This Court has jurisdiction of this appeal pursuant to the provisions of Title 28, United States Code, Section 1291, the findings, conclusions and judgment of the Dis-District Court (Appx. C) being a final order.

---

[1]We attach as an appendix to this brief, marked "Appendix C", "Appendix D" and "Appendix E", respectively, copies of the Second Amended Complaint, Answer to the Second Amended Complaint, and the Findings, Conclusions and Judgment of the District Court.

Statutes and Regulations Involved.

The complaint to denaturalize was brought pursuant to Section 340(a) of the Nationality Act of 1952 (66 Stat. 260) (8 U. S. C. 1451(a), 1952 Ed.), which reads in part as follows:

> "§1451. *Revocation of naturalization—Concealment of material evidence; refusal to testify.*
>
> "(a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 1421 of this title in the judicial district in which the naturalized citizen *may reside* at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by *concealment of a material fact* or by *willful misrepresentation,* and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate. . . ." (Emphasis added.)

Defendant was naturalized on the 28th of November, 1940. The Nationality Act of 1940 did not become effective until 90 days after October 14, 1940, and is therefore not applicable. The Immigration and Nationality Act of 1906 (34 Stat. 596), as amended by the Act of March 2, 1929 (45 Stat. 1512), is applicable. Sections 4, 9, 11 and 28 read in pertinent part as follows:

> "SEC. 4. That an alien may be admitted to become a citizen of the United States in the following manner *and not otherwise:*

"*First. He shall declare on oath before the clerk of any court authorized by this Act to naturalize aliens, or his authorized deputy,* in the district in which such alien resides, two years at least prior to his admission, and after he has reached the age of eighteen years, *that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or* sovereignty, and particularly by name, to the prince, potentate, state, or sovereignty to which the alien may be at the time a citizen or subject. And such declaration shall set forth the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date of arrival, the name of the vessel, if any, in which he came to the United States, and the present place of residence in the United States of said alien: *Provided, however,* That no alien who, in conformity with the law in force at the date of his declaration, has declared his intention to become a citizen of the United States shall be required to renew such declaration. (Emphasis added.)

"Second. Not less than two years nor more than seven years after he has made such declaration of intention he shall make and file, in duplicate, a petition in writing, signed by the applicant in his own handwriting and duly verified, in which petition such applicant shall state his full name, his place of residence (by street and number, if possible), his occupation, and if possible, the date and place of his birth; the place from which he emigrated, and the date and place of his arrival in the United States, and, if he entered through a port, the name of the vessel on which he arrived; the time when and the place and name of the court where he declared his intention to

become a citizen of the United States; if he is married he shall state the name of his wife and, if possible, the country of her nativity and her place of residence at the time of filing his petition; and if he has children, the name, date, and place of birth and place of residence of each child living at the time of the filing of his petition; *Provided,* That if he has filed his declaration before the passage of this Act he shall not be required to sign the petition in his own handwriting.

"The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and *that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state* or sovereignty, and particularly by name to the prince, potentate, state or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States, and whether or not he has been denied admission as a citizen of the United States, and, if denied, the ground or grounds of such denial, the court or courts in which such decision was rendered, and that the cause for such denial has since been cured or removed, and every fact material to his naturalization and required to be proved upon the final hearing of his application. (Emphasis added.)

"As to each period of residence at any place in the country where the petitioner resides at the time of filing his petition, there shall be included in the petition the affidavits of at least two credible witnesses,

citizens of the United States, stating that each has personally known the petitioner to have been a resident at such place for such period, and that the petitioner is and during all such period has been a person of good moral character.

"At the time of filing his petition there shall be filed with the clerk of the court a certificate from the Department of Commerce and Labor, if the petitioner arrives in the United States after the passage of this Act, stating the date, place, and manner of his arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition.

"Third. He shall, before he is admitted to citizenship, *declare on oath in open court that he will support the Constitution of the United States,* and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, *and bear true faith and allegiance to the same.*

"Fourth. No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) *during all the periods referred to in this subdivision he has behaved as a*

person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the country where the petitioner resides at the time of filing his petition, and the other qualifications required by this subdivision during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by this Act to be included in the petition. If the petitioner has resided in two or more places in such county and for this reason two witnesses can not be procured to testify as to all such residence, it may be proved by the oral testimony of two such witnesses for each such place of residence, in addition to the affidavits required by this Act to be included in the petition. At the hearing, residence within the United States but outside the county, and the other qualifications required by this subdivision during such residence shall be proved either by depositions made before a naturalization examiner or by the oral testimony of at least two such witnesses for each place of residence. (Emphasis added.)

* * * * * * * *

"SEC. 9. That every final hearing upon such petition shall be had in open court before a judge or judges thereof, and every final order which may be made upon such petition shall be under the hand of the court and entered in full upon a record kept for that purpose, and upon such final hearing of such petition the applicant and witnesses shall be examined under oath before the court and in the presence of the court.

* * * * * * * *

"SEC. 11. *That the United States shall have the right to appear before any court or courts exercising jurisdiction in naturalization proceedings* for the purpose of cross-examining the petitioner and the witnesses produced in support of his petition concerning any matter touching or in any way affecting his right to admission to citizenship, and shall have the right to call witnesses, produce evidence, *and be heard in opposition to the granting of any petition* in naturalization proceedings." (This section in the 1952 Act is found in 8 U. S. C. 3447(d).) (Emphasis added.)

* * * * * * * *

"SEC. 28. The Commissioner of Naturalization, with the approval of the Secretary of Labor, shall make such rules and regulations and such changes in the forms prescribed by section 27 of this Act as may be necessary to carry into effect the provisions of the naturalization laws. Certified copies of all papers, documents, certificates, and records required to be used, filed, recorded, or kept under any and all of the provisions of this Act shall be admitted in evidence equally with the originals in any and all proceedings under this Act and in all cases in which the originals thereof might be admissible as evidence."

It was not until the Act of 1940 became effective that the provision was made (8 U. S. C. 705) that no person should be naturalized as a citizen of the United States who "believes in, advises, advocates or teaches, or who is a member of or affiliated with any organization, association, society or group that believes in, advises, advocates or teaches (1) the overthrow by force or violence of the Government of the United States or of all forms of law."

The complaint is therefore predicated upon the requirements of the 1906 Act, as amended, as above set out, and upon the taking of the oath in open court as provided in

the 1906 Act and as contained in the Petition for Naturalization which contains the provisions, "I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of (which) at this time I am a subject (or citizen) . . ."

Regulations.

The pertinent regulations of the Immigration and Naturalization Service which were applicable at the time of defendant's naturalization on November 28, 1940, and codified in Title 8, Code of Federal Regulations, Subchapter C, Part 70, are contained in the basic volume containing regulations in effect June 1, 1938. The 1939 and 1940 Supplements to the Code of Federal Regulations do not contain any changes which are pertinent in this case.

The pertinent portions of regulations which are contained in Section 70.7, 70.18, 70.20, 76.1, 76.4 and 76.7 of Title 8, Code of Federal Regulations, read as follows:

> "70.7. *Preliminary examinations; manner of conducting; facts to be ascertained.*
>
> "Wherever practicable, preliminary examinations of applicants for naturalization and their witnesses will be made in person. The principal purpose of such examinations is to obtain information bearing upon the applicant's admissibility to citizenship and the qualifications of the witnesses, rather than to obtain responses for record purposes. Both the applicant and the witnesses shall be carefully interrogated to determine whether the applicant has complied with the jurisdictional requirements of law, is mentally and

morally qualified for citizenship, *is attached to the principles of the Constitution,* and is well disposed to the good order and happiness of the United States. *The question of possible arrests must be thoroughly covered. If the applicant has been arrested or charged with the violation of any law or ordinance, all the facts will be ascertained, including information as to whether conviction resulted.* Particular attention must be given to the determination of the applicant's marital history and the whereabouts of his wife and minor children. The questions will be repeated in different form and elaborated until the examiner is satisfied the person being interrogated fully understands them. *The witnesses shall be questioned to develop not only their own credibility and competency but the extent of their personal knowledge of the* applicant's residence, moral character, and attachment to the principles of the Constitution. Search will be made of appropriate court and other records in establishing the qualifications of the applicant and the witnesses. (Emphasis added.)

* * * * * * * *

"70.18. *Preliminary hearings upon petitions for naturalization by designated examiners; how conducted.* Preliminary hearings upon petitions for naturalization by examiners or officers of the Immigration and Naturalization Service designated by the judge or senior judge of any United States District Court pursuant to the Act of June 8, 1926 (44 Stat. 709; 8 U. S. C. 339a), shall be conducted at such times and places as may be fixed by the designated examiner or officer upon the approval of the appropriate district director. All notices to petitioners to appear at such hearings, if necessary, shall be given to them by the district director or divisional director,

as the case may be. Such hearings shall be open to the general public and shall be conducted in the orderly and dignified manner usual to a court proceeding. They shall be conducted in person by the designated examiner or officer, who must have before him in person the petitioner and his witnesses. Each petitioner and his witnesses shall be first duly sworn by the designated examiner or officer. The examination thereafter shall be thorough and courteous in manner, scrupulously fair, and free from prejudice or bias. The designated examiner or officer shall have before him at the preliminary hearing the record of the administrative examination in each case. He will not, however, be limited to the information contained in such record, but may use any material evidence or data received from other sources and may use and examine other witnesses than those produced by the petitioner. After the conclusion of the preliminary hearing in each case where a favorable recommendation is to be made to the court the petitioner may be told when to appear before the court for final hearing or that he will be notified of the day. The witnesses in such a case may be excused from further appearance. In any case where the recommendation is unfavorable the designated examiner will inform the petitioner of his right to appear before the court in person with his witnesses for the final hearing, of which date he shall be notified.

* * * * * * * *

"70.20. *Record of preliminary naturalization hearing.* At the time the designated examiner or officer conducts the preliminary hearing of each petitioner for naturalization he will enter on Form 2355 the petition number, petitioner's name, and, upon completion of the examination, fill in the symbols indicating his findings and a brief notation of the reasons

for any unfavorable findings. This docket (Form 2355) shall be signed by him and shall be made available to the judge whenever desired, and after the final hearing filed of record in the field office. (44 Stat. 709; 8 U. S. C. 399a.)

* * * * * * * *

"76.1. *Preliminary form; to whom sent; when fee for certificate of arrival to accompany.* Each prospective petitioner for naturalization shall be required to fill out properly, sign, and forward to the appropriate district director Preliminary Application Form No. A-2214, accompanied by two photographs of the applicant in accordance with Part 74, and the applicant's Declaration of Intention if one be required. The application shall also be accompanied by the statutory fee of $2.50 in the form of a money order made out 'Payable to the order of the Commissioner of Immigration and Naturalization, Washington, D. C.' for the necessary certificate of arrival, if the entry of the applicant into the United States occurred (a) after June 29, 1906, and a certificate of arrival is required to support a petition for naturalization, although a declaration of intention is not required, or (b) where the entry was after June 29, 1906, and the declaration of intention was made prior to July 1, 1929. (Sec. 3, 48 Stat. 597; 8 U. S. C. 380a.)

* * * * * * * *

"76.4. *Oath of petitioner and witnesses.* The petition for naturalization shall be executed under oath or affirmation. The following shall be administered to the petitioner:

"You do swear (affirm) that you know the contents of this petition for naturalization subscribed by you, that the same are true to the best of your own knowledge, except as to matters therein stated to be al-

leged upon information and belief, and that as to those matters you believe them to be true, and that this petition was signed by you with your full, true name: So help you God.

"The following shall be administered to each of the witnesses who verify the petition:

"You do swear (affirm) that the statements of fact you have made in the affidavit of this petition for naturalization subscribed by you are true to the best of your knowledge and belief; So help you God. (Sec. 4 (2), 34 Stat. 597; sec. 6, 45 Stat. 1513; 8 U. S. C. 379.)

* * * * * * * *

"76.7. *Proof of residence, good moral character, and other qualifications; depositions.* The applicant for naturalization, except one granted special exemption from the usual residential requirements by the naturalization laws, must have the petition for naturalization verified at the time it is filed, by the affidavits of at least two credible witnesses, citizens of the United States, for each period of residence at any place in the county in which the petitioner resides at the time of filing the petition. Each such witness shall state in his affidavit that he has personally known the petitioner to have been a resident at such place for such period and that the petitioner is and during all such period has been a person of good moral character. No alien, except one otherwise specifically exempted by the naturalization laws, shall be admitted to citizenship unless (a) immediately preceding the date of his petition he has resided continuously within the United States for at least five years and for at least six months within the county where he resided at the time he filed his petition; (b) he has resided continuously within the United States from the date

of his petition up to the time of his admission to citizenship; (c) during all the periods herein referred to he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition and the other qualificatoins required during such residence shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required to be included in the petition. If the petitioner has resided in two or more places in the county in which he resided at the time of filing his petition, and for this reason two witnesses cannot be procured to testify as to all such residence, it may be proved by the oral testimony of two such witnesses for each such place of residence. At the hearing, residence within the United States but outside the county, and the other qualifications required during such residence shall be proved either by deposition made before a naturalization examiner or by oral testimony of at least two such witnesses for each place of residence. (Sec. 4(2), 34 Stat. 597; sec. 6(a), (b), 45 Stat. 1513; 8 U. S. C. 379, 382.)"

Statement of the Case.

This is an action for denaturalization, based upon two causes of action stated in the Second Amended Complaint (Appx. C). The First Cause of Action alleges merely intentional concealment of material facts prior to naturalization and that those facts are (Appx. C, par. V): (1) That prior to and at the time of filing said petition for naturalization defendant was an active member and officer of the Communist Party; (2) That prior to naturalization the defendant had been arrested and charged with viola-

tions outlined in paragraph V of the First Cause of Action; and (3) during the 5 years immediately preceding naturalization defendant did not behave as a person of good moral character. No proof as to the nature and aims of the Communist Party, or the defendant's knowledge thereof, is necessary under the First Cause of Action. Proof of concealment of any one of the three items alleged in the First Cause of Action is sufficient to sustain a judgment of denaturalization. Proof of concealment of any one of the arrests alleged in item (2) is sufficient.

The Second Cause of Action alleges willful misrepresentation in that in the proceedings which led to his naturalization the defendant (1) intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order," and no others; that he had never belonged to any Communist, Nazi or Facist organization, when in truth and fact he had been an active member and officer of the Communist Party of the United States from on or about the year 1926; (2) intentionally and falsely represented that he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States and it was his intention to renounce allegiance to any other state or potentate; and (3) intentionally and falsely represented that he had never been arrested or charged with any violation of law of the United States or state or any city ordinance or traffic regulation. With regard to item (1), misrepresentation as to organizations to which he belonged, and item (3), misrepresentations that he had never been arrested, etc., the issue of the nature and aims of the Communist Party or the defendant's knowledge thereof are still not put in issue by the pleadings and the real issue is the question of intentional misrepresentation. However, with regard to the misrepresentation alleged under item (2), as to appellant's "attachment" and "allegiance" to the

United States, the issue does arise as to his state of mind and proof of the nature and aims of the Communist Party, and the defendant's knowledge thereof is an essential element because it is alleged that by reason of the defendant's knowledge of the nature and principles of the Communist Party and his membership therein that he was *not* "attached to the principles of the Constitution" and he *did not have* any "intention to renounce" allegiance to a foreign state. It is as to this phase of the case that appellant's arguments with regard to the Supreme Court decisions in the *Nowak* and *Maisenberg* cases are directed. That those cases are clearly distinguishable is covered in Point II of our argument.

The question is now raised for the first time and appellant should therefore be barred from raising it on appeal, as to whether or not any of the arrests concealed by the appellant, as alleged in the First Cause of Action and likewise alleged to be misrepresented in the Second Cause of Action, were or were not illegal. The point is immaterial as discussed under our Point I, as to either the concealment or misrepresentation action even if appellant had standing to raise the question at this point.

The third problem raised by appellant is the question of *res judicata* of the naturalization decree. While there seems little merit to the contention, the question was extensively treated in a memorandum for the District Court and we again treat all of the important cases in Point III of this brief.

Since a denaturalization case essentially involves the petition for naturalization and the examination of the applicant by the Immigration and Naturalization Service, the documents which reflect those proceedings are particularly important. Since the exhibits are in their original form on this appeal, appellee has reproduced as Appendices "A" and "B" to this brief Government's Exhibits 2A and

2B and Government's Exhibits 2F and 2G which are the preliminary forms for application for naturalization, and the triplicate original of the petition for naturalization upon which the notations of the Immigration Examiners were made.

In reading the testimony of Calvin Derringer, the Naturalization Examiner and the first witness for the Government in the action, it is almost essential that the Court have before it these two documents to understand the testimony.

Appendices "C," "D," and "E," reproduce the Second Amended Complaint, the Answer thereto, and the Court's Findings, Conclusions and Judgment, respectively. These documents were not available in the Transcript of Record at the time this brief was prepared.

In addition, there is attached to this brief, as Appendix "F," a list of the Government's Exhibits and Defendant's Exhibits which are before the Court in their original form, indicating pages in the Transcript of Record where such exhibits are referred to. A list of such exhibits was marked "Government's Exhibit I for Identification."

As the complaint is drawn, and the case was tried and the Findings and Judgment were entered, any one ground of concealment or misrepresentation, such as concealment of arrests, or concealment of membership in the Communist Party, is alone sufficient to sustain the judgment of denaturalization.

ARGUMENT.

I.

There Is Clear, Unequivocal and Convincing Evidence That Appellant Misreprsented That He Was a Person "Attached to the Principles of the Constitution of the United States" and That He Would Bear "True Faith and Allegiance to the United States," and the Judgment of Denaturalization Should Stand on Those Grounds, as Well as on the Grounds of Concealment of Prior Arrests and Concealment of Membership and Officership in the Communist Party.

Under Point One in appellant's brief (App. Br. 4), he apparently desires to argue the applicability of the *Nowak* and *Maisenberg* cases, (*Maisenberg v. United States,* 356 U. S. 670, and *Nowak v. United States,* 356 U. S. 660). He says that "The findings are without support in the evidence." It is difficult to determine which findings he is referring to. The heading of appellant's Point I indicates he is referring to the findings of "concealment regarding membership in the Communist Party," (Count I) whereas, the argument relates to evidence as to knowledge of the nature and aims of the Communist Party or advocacy thereof, which evidence was offered as to the allegations in Count Two in the Second Amended Complaint and the portions of paragraph II, Sub. (2) thereof as to misrepresentation of "attachment to the Constitution" and "allegiance to the United States."

Appellant's argument (App. Br. 6) practically concedes that the Government's case proved he was an active member, leader and functionary of the Communist Party, and it can hardly be disputed from the testimony of Calvin Derringer that this fact was concealed by Mr. Chaunt [T. R. 22, 32-34, 40-42]. This is an issue raised by Count One and requires no proof as to the nature or aims of the Communist Party or appellant's knowledge thereof.

It is in this respect, as well as others, that the instant case is so distinguishable from the *Nowak* and *Maisenberg* cases, *supra.* In neither of those cases was the defendant categorically questioned by the naturalization examiner concerning his organizational memberships generally, or with respect to possible Communistic beliefs specifically. In both *Nowak* and *Maisenberg,* the Government relied on the now well-known Question 28, which the Supreme Court held to be ambiguous. That question was never relied on in the present case.

In the instant case, on the other hand, the district court has found as fact that the defendant intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order," and no others; that Naturalization Examiner Reuben E. Wilson had asked him, "Do you believe in Communism, Fascism or Naziism?" and he intentionally and falsely answered "No"; and that the defendant had in fact been an active member and officer of the Communist Party since 1926 [Finding V, Count Two, Appendix E]. In the *Nowak* case, the District Court found that such categorical questions had not been asked (*United States v. Nowak,* 133 Fed. Supp. 191 (E. D. Mich., 1955)).

The questions put to this defendant were sufficiently clear to put him on notice that the examiner was inquiring into possible Communist membership or beliefs. His wilful concealment of such membership and beliefs, when specifically asked, is ground for revocation (*United States v. Sweet,* 106 Fed. Supp. 634 (E. D. Mich., 1952), and *United States v. Charnowola,* 109 Fed. Supp. 810 (E. D. Mich., 1953), both affirmed 211 F. 2d 118 (C. A. 6, 1954), cert. den. 348 U.S. 817; *United States v. Chandler,* 152 Fed. Supp. 169 (D. Md., 1957)).

Perhaps, to make the issue clear, it would be well to set out at this point the allegations in Paragraph II of the

Second Cause of Action relating to misrepresentation of "attachment" and "allegiance," which are as follows:

> "Said order admitting defendant to citizenship and said Certificate of Naturalization were procured by defendant by willful misrepresentation in that defendant in the proceedings which lead to his naturalization . . . (2) intentionally and falsely represented that during the five years immediately preceding the date of his Petition for Naturalization defendant was, and behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, and intentionally and falsely represented that it was the defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, estate or sovereignty, and that it was his intention to bear true faith and allegiance to the United States of America and to support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic, whereas, in truth and in fact, by reason of defendant's membership in, and his knowledge of the nature and principles of the Communist Party, the defendant was not and had not behaved as a person attached to the principles of the Constitution of the United States or well disposed to the good order and happiness of the United States, and it was not defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and it was not his intention to bear true faith and allegiance to the United States of America or to support or defend the Constitution and laws of the United States of America against all enemies, foreign and domestic."

This allegation follows very closely the provisions of the statute setting out the requirements for naturalization

(*supra,* under Statutes and Regulations and, in particular, the naturalization statute, Section 4, subparts Second, Third and Fourth). [Finding VIII, Second Cause of Action, Appendix E.]

In order to prove concealment of the requirement of "attachment" and "allegiance," appellee relies upon Question *25* in the Preliminary Form for Petition for Naturalization, which was Exhibit 2B (Appendix A) which inquires whether or not the applicant has read the oath of allegiance and is willing to take the oath in becoming a citizen, and the certification at the bottom of that form that the statements made in the form are true to the best of the appellant's knowledge and belief, plus appellant's oral statements under oath to the Immigration Examiner Reuben E. Wilson as reflected in his written notation on Exhibit 2G "R.E.W. AC" [T. R. 61, 71]. Appellee further relies upon the oath which was administered by the Court at the time of the naturalization, as required by Section 4 of the statute, subsection Third (*supra*).

It is clear from the testimony of Calvin Derringer, the Immigration Examiner, that not only did Mr. Chaunt fill out the answers "Yes" to Question 25, in both places provided on the form (see Appendix B), and signed that petition, but he was again orally asked the questions under oath by Mr. Derringer, and reiterated the answers, as indicated by the fact that the answers on said exhibit (see Appendices A and B) are circled by Mr. Derringer [T. R. 39-41]. There is no question that at the time the appellant was naturalized he took the statutory oath before the Court to support the Constitution of the United States and renounce all allegiance to any foreign state, and to bear true faith and allegiance to the United States.

The real issue as to the allegations of lack of "attachment" and lack of "allegiance" (*supra*) insofar as the evidence is concerned, is whether or not, at the times the appellant made these statements under oath, and for five years prior thereto, and at the time he took the oath of

allegiance, by reason of his membership in the Communist Party and his knowledge of the aims and objectives thereof, and its international character and domination by the Russian Government, he had a state of mind which was that of attachment to the Constitution and allegiance to the United States or whether, as alleged in Count Two of the complaint, he in truth and in fact *was not* and *had not behaved as* a person attached to the Constitution, and it *was not* his intention to bear true faith and allegiance to the United States of America.

We must further distinguish the argument in appellant's brief (App. Br. 6), where it is said that proof of active membership and leadership in the Communist Party "does not suffice to make out the Government's case, for Congress in the Immigration and Naturalization Act of 1952 has not made membership or holding office in the Communist Party a ground for loss of citizenship." Nowhere in the complaint is it alleged that *membership* in the Communist Party is a ground for loss of citizenship, nor is that issue raised under the Second Cause of Action or the allegations above set out. What is raised in the First Cause of Action, among other items, is the issue of *"concealment"* of a material fact, to-wit, concealment of membership in the Communist Party, which is quite a different thing.

Concealment of arrests or concealment of membership in an organization, revelation of either of which might have lead the Immigration Service to make further investigation of the appellant, is sufficient grounds upon which to base a decree of denaturalization. See *United States v. Corrado,* 121 Fed. Supp. 75, 227 F. 2d 780, cert. den. 351 U. S. 925; *Stacher v. United States,* 258 F. 2d 112, cert. den. 358 U. S. 907, and a more detailed discussion of this under Point II of this brief.

We turn now to the evidence with regard to the state of mind of the appellant at the time that he represented

to the Immigration Service in answer to Question 25 that he was willing to take the oath of allegiance and attachment, and at the time that he actually took the oath of allegiance and attachment.

The appellant did not take the witness stand on his own behalf to either admit, deny or explain, with regard to any of the evidence offered by appellee, or as to any of the issues raised by the complaint. He was called as a witness by appellee under Rule 43(b), and declined to answer any of the questions which were asked him, so that as Judge Yankwich said in the case of *United States v. Title,* 132 Fed. Supp. 185, at 188, "The failure to testify leaves the record without any defensive matter except such as is contained in the cross-examination of the Government's witnesses and some documentary evidence offered by the defendant . . ." Moreover, Judge Yankwich further indicated in the *Title* case, there is a "justifiable inference(s) permitted from failure to produce evidence which it was in the power of the defendant to produce," and there is a clear distinction between that justifiable inference, and the fact that no unfavorable inference could be drawn from the fact of assertion of the claim of privilege. As this Court said in *Jiminez v. Barker* (1958), 252 F. 2d 550, where he declines to answer the questions he accepts the hazards that follow.

So we do not have in this case any expression from the defendant with regard to his own state of mind at and prior to the time he took the oath of naturalization. Other than that, state of mind is a question which is proved by evidence of acts and conduct which is the basis of the appellee's case here on this point.

See also the following cases:

Local 167 International Brotherhood of Teamsters v. United States of America (S. Ct., 1934), 291 U. S. 293;

Anderson v. United States of America (5 Cir., 1950), 185 F. 2d 243;

Williams v. United States of America (5 Cir., 1952), 199 F. 2d 921;

Kent v. United States of America (5 Cir., 1946), 157 F. 2d 1.

Without minutely summarizing the testimony of John Lautner there is little question but that Exhibits 17, 18, 27 and 28 in evidence, were the "textbooks" of the Communist Party and set forth the Communist doctrines which sustain the allegations in paragraph III of the Second Cause of Action, that the Communist Party advised, advocated and taught and caused to be written, circulated, published and distributed printed matter which taught the duty, necessity and propriety of overthrowing by force and violence the Government of the United States.

We proceed then to the particular evidence which indicates the knowledge of the appellant at and prior to the date of his naturalization on November 28, 1940, of the aims and objectives of, and his participation in the program of, the Communist Party of the United States, and his knowledge of the fact that said Communist Party of the United States, was a section of an international organization called "The Communist International," and that decisions made by the international organization were binding upon the Communist Party of the United States and the individual members thereof, as alleged in paragraph IV of Count Two.

Perhaps it would be well, before outlining the activities of the defendant as related by the witnesses, if we call attention to what this case is *not*. It is *not* a case where membership in the Communist Party is sought to be proved only by evidence of attendance at secret or "closed" meetings. It is *not* a case in which the defendant's knowl-

edge of the aims of, or his belief in, the Communist Party is sought to be proven by "so-called government witnesses," who have left the Communist Party and as to which there have been claims they were previously discredited. It is *not* a case where the Government relies on oral testimony only.

It *is* a case in which the Government relies on the testimony of some witnesses who were members of the Communist Party; some witnesses who had absolutely no connection with and never were members of the Communist Party; on documentary evidence such as four Communist Party membership books personally signed by the defendant, Peter Chaunt, as a District Organizer [T. R. Vol. V, 193-197; Exs. 4, 5, 6 and 7 in evidence]; articles written by the defendant, Peter Chaunt, and published in newspapers; and testimony by competent, percipient and reliable witnesses, unimpeached, who testified to the defendant's activities over a long period, starting in 1930 through 1940 when he was naturalized, and after. It *is* a case in which the activities of Peter Chaunt as a District Organizer of the Communist Party and as a high "functionary," in a position of leadership in that party, is well established by several witnesses including the witness, John Lautner, who likewise, during his membership in the Communist Party, was also a District Organizer, functioning in identical capacities, with identical duties and functions, and a witness who personally knew and associated and worked with the defendant over a long period of time in these capacities. It *is* a case in which the witnesses did not know each other, never were associated, but each had occasion to meet or work with the defendant Chaunt in various places in the United States in which he operated—in St. Louis, Missouri, in Hamilton, Ontario, in Buffalo, New York, and elsewhere.

Volumes IV through VII of the Transcript of Record, pages 1-550, consists of the testimony of these witnesses

and is a detailed recital of the occasions and events over a period of ten years prior to the defendant's naturalization as to which they were competent to testify. For a clear understanding of the breadth and scope of the evidence regarding the defendant, it is necessary to read those 550 pages. In this brief we suggest only the outline of the defendant's activities.

The evidence starts with the years 1928 and 1929. The witness Lautner [T. R. Vol. V, 287-314, 326-353; Vol. VI, 356-483; Vol. VII, 516-525] testified that the defendant in those years was working in Akron, Ohio, in the Young Communist League, along with Betty Garnett [T. R. Vol. VI, 417].

The next activity we find the defendant engaged in is about the year 1930 when he was District Organizer of the Communist Party, District 15, which was located in Connecticut. At that time not only was the defendant District Organizer, but according to Exhibit 8, which is a copy of the Daily Worker dated January 22, 1930, he was a speaker at a Lenin memorial.

We have testimony on cross-examination of witness Lautner that the Communist Party annually had these memorials and that the district organizers of the various districts were usually the speakers.

During the same year of 1930, the defendant Peter Chaunt wrote an article in the Daily Worker, entitled "Offensive Strategy, by Peter Chaunt, District Organizer, District 15." His name was also mentioned in another article in the Daily Worker dated February 10, 1930, as a Communist Party organizer for the particular district.

The defendant was a District Organizer in the Buffalo, New York, District of the Communist Party, District No. 4. Witness Kalke [T. R. Vol. IV, 112-183] met the defendant during that time, either the winter of 1930 or 1931, in the offices of the Unemployed in Council, in New

York and the testimony is that the Unemployed Council was an instrumentality of the Communist Party in the sense that it was used by the Communist Party to foster its ends.

At the time the witness Kalke met the defendant, the defendant introduced himself as the new District Organizer of the Communist Party in Buffalo, New York. A few weeks later the defendant assigned witness Kalke, as a member of the Communist Party, to do agitational work in the Broadway Auditorium in connection with an unemployed demonstration which was to take place later. On the morning of the unemployed demonstration we find the defendant in the offices of the International Labor Defense, instructing witness Kalke and others including Joseph Bogdon and Elvi Wekmark as to what they should do in connection with the demonstration. Witness Kalke was to go to the Common Council, and to make a speech after he would be introduced by a person by the name of Hall, the International Labor Defense Director, which witness Kalke did [T. R. Vol. IV, 119].

We next find the defendant at a convention of the Young Communist League in Rochester, New York, where he was again introduced as the District Organizer for the Communist Party, and he spoke to the convention concerning the work of the Young Communist League and what its function was in connection with the Communist Party [T. R. Vol. IV, 122].

Later we find the defendant in about April of 1931 at a meeting of the Young Communist League committee, criticizing witness Kalke for his lack of militancy in the Communist Party and telling him that in order to give him a chance to redeem himself he would send him as a colonizer to Syracuse, New York [T. R. Vol. IV, 129]. And he also gave witness Kalke the name of the person he was to contact in Syracuse, New York. And witness

Kalke did go to Syracuse, New York, and contact this particular person.

The defendant later had contact with witness Kalke in the Communist Party headquarters in New York and allowed the witness to work in the International Labor Defense. While witness Kalke was working in the International Labor Defense the defendant told him about certain persons who had been arrested in Niagara Falls and advised witness Kalke to go to Niagara Falls and try to secure aid for them and to go into court, if necessary, and protest the convictions.

In addition to this, we find the defendant's name appearing in the Daily Worker of January 23, 1931 [Ex. 11 in evidence], in connection with a plan that Peter Chaunt had outlined for a problem that existed in Little Rock, Arkansas.

For three days during the year 1931 the defendant, along with Witness Lautner, taught Leninism at a training school for Communism in the Canadian Party, in Hamilton, Ontario [T. R. Vol. V, 292]. In this activity the defendant was expounding the very matters which are at issue here and as to which we have the question of his state of mind [T. R. Vol. V, 296].

Later we find the defendant, between about 1932 to about 1935, as District Organizer in the St. Louis, Missouri, area. There witness George E. Duemler (never a member of the Communist Party), an attorney for the United States Department of Labor since 1939, and at that time an attorney representing a large number of unions and various other organizations, came in contact with the defendant [T. R. Vol. V, 208-239]. Witness Duemler particularly remembers a convention of the Continental Congress of Workers and Farmers which was held in Columbus, Missouri, on July 3, 1933. Before the convention took place the defendant came to witness

Duemler and asked him to furnish credentials for the Communist Party to be admitted as a member of this Continental Congress. He was refused.

At the time of the convention the defendant marched in with his followers and demanded that the Communist Party and other organizations that he purported to represent be admitted to this Congress. Exhibit 37, which is a part of a newspaper, The Columbia Missourian, dated July 3, 1933, ran a story on the matter.

During the period of time, which was approximately two years, that Mr. Duemler was acquainted with the defendant, he had occasion to come in contact with him frequently. On all of these occasions the defendant, Peter Chaunt, sought to have Mr. Duemler join in with the Communist Party in some sort of activity.

On one occasion in February, 1944, the defendant delivered a protest to the Austrian Consul as spokesman for the Communist Party of the United States.

The defendant also admitted to the witness George E. Duemler that he was the District Organizer of the Communist Party in the St. Louis area. Mr. Chaunt, in the St. Louis area, was known as "Mr. Communist."

While the defendant was District Organizer in St. Louis we also have his name appearing on two occasions as the District Organizer of the Communist Party in news stories in the Daily Worker [Exs. 9 and 10].

While the defendant was in St. Louis we also have the testimony of Witness Rushmore, who, when he first met the defendant, was not a member of the Communist Party [T. R. Vol. V, 248-268]. He was very young and had been interested in Communism and had been directed to the Communist Party headquarters in St. Louis, where he met the defendant, Peter Chaunt.

Defendant Chaunt at that time introduced himself as the District Organizer to Witness Rushmore and talked

with Witness Rushmore concerning certain policies or aims of the Communist Party.

Now, what the defendant Chaunt said at that particular time will have to be taken with a grain of salt for he knew he was dealing with a young person who might be suspicious of Communism. Nevertheless, even with that in mind he said enough during the course of this conversation to indicate clearly that his attitude and his ideas were with Russia, and that he considered Russia the "fatherland" [T. R. Vol. V, 243-244].

Defendant Chaunt gave Witness Rushmore an application card for admission to the Communist Party of the United States, and later introduced him to the District Organizer of the Young Communist League and suggested that he join the Young Communist League.

In 1936 or 1938, according to the Witness Lautner, Peter Chaunt attended a national convention of the Communist Party, held in Manhattan Center on 34th Street, New York City, at which time he was head of a delegation from the Nut Pickers Union, and a delegate to the convention as was Witness Lautner [T. R. Vol. V, 298].

Exhibit 31 in evidence contains the resolutions of the Communist Party which were passed at this Tenth Convention in 1938.

In the years 1939 to 1942 the defendant was a "functionary" of the Communist Party assigned as an assistant educational director of the International Workers Order [T. R. Vol. VI, 368-389]. The record is clear as to the relationship between the International Workers Order and the Communist Party. All of the top personages in the International Workers Order were members of the Communist Party.

The Witness Lautner first came there to talk to Mr. Chaunt concerning a student whom he had sent to the defendant, Peter Chaunt.

In 1945 we find the defendant still in the Communist Party. At that time he was attending a meeting in Cleveland, Ohio, to organize a district bureau of the Communist Party of the United States [T. R. Vol. V, 331-332].

Lastly, something should be said with regard to the defendant's knowledge of the discipline of the Communist Party of the United States and its subservience to the orders and discipline of the "Comintern," meaning Communist International. The question of discipline is covered in Mr. Lautner's testimony [T. R. Vol. V, 304-314].

The importance of the part which the District Organizer played in the enforcement of discipline, as the disciplinary organization was set up from the "Comintern" down, is clearly outlined. On Exhibits 4, 5, 6 and 7, the membership books in the Communist Party signed by Peter Chaunt, is printed as "extracts from the Statutes of the Communist Party of the U.S.A." Section 3 on membership, which provides that "A member of the party can be every person from the age of 18 up who accepts the program and statutes of the Communist International and the Communist Party of the U.S.A., who becomes a member of a basic organization of the party, who is active in this organization and who subordinates himself to all decisions of the Comintern and of the Party and regularly pays his membership dues."

The membership books further recite a portion of Section 4 entitled "The Structure of the Party" and set forth as one of the principles "acceptance and carrying out of the decisions of the higher Party committees by the lower, strict Party discipline, and immediate and exact applications of the decisions of the Executive Committee of the Communist International and of the Central Committee of the Party." The membership books further contain, under a heading, "On Discipline," quotations from Lenin such as "He who weakens, no matter how little, the

iron discipline of the Party and the proletariat (especially during the period of dictatorship), effectively helps the bourgeoisie against the proletariat (Lenin)." "The Party has the best training school for workingclass leaders, is the only organization competent, in virtue of its experience and authority, to centralize the leadership of the proletarian struggle, and thus to transform all nonparty workingclass organizations into accessory organs and connecting belts linking up the Party with the workingclass as a whole (Lenin)."

How can it be said that a person who subscribes to the principles of the Communist Party as announced in the textbooks, in the Party membership books, and who participated at a high level in the activity of that Party in this country, not only in its promotional efforts in this country but in its disciplinary efforts as controlled and directed by the Communist International with its headquarters in Moscow, Russia, is a person who at one and the same time could truthfully aver his undivided allegiance to the United States of America? How can it be said that such a person was "attached" to the principles of the Constitution of the United States, so clearly in direct conflict with the principles of the constitution of the Communist Party of the United States and of the Communist International?

The evidence on this point is reasonable, substantial and probative.

II.

The Evidence Is Clear, Unequivocal and Convincing That Appellant Intentionally Concealed From the Immigration Service Three Prior Valid Arrests and That He Was an Active Member and Officer of the Communist Party, and the Judgment of Denaturalization Should Be Sustained on Either Ground.

A. Invalidity of the Arrests Concealed by the Defendant Was Not Alleged as a Defense in the Answer of the Defendant, No Evidence With Regard to the Question Was Offered, Defendant Did Not Testify Regarding That Matter, or Any Other, and the Question Was Not Raised Either Orally or by Memorandum: Appellant Is Therefore Precluded From Raising This Point on Appeal. In Any Event, the Arrests Which Were Concealed by the Defendant, According to the Findings of the District Court, Were Valid Arrests as a Matter of Law.

B. If It Is Necessary to Make a Finding That the Arrests Which Were Concealed Were Valid (Which We Think It Is Not), the Finding of "Concealment of Arrests" Connotes Valid Arrests and Is Sufficient.

Count One of the Second Amended Complaint alleges concealment of three different matters: Item (1) That he was an active member and officer of the Communist Party of the United States; and item (2) relating to concealment of arrests and charges of which four are listed as concealed, (a), (b), (c) and (d). In the Findings the concealment of only three arrests is found, the fourth, being item (d) and referring to the same offense as item (c), which was alleged to be committed on or about March 11, 1930.

The testimony of Calvin Derringer [T. R. 8-100], the Immigration Examiner who examined appellant on his Petition for Naturalization, relates principally to Govern-

ment's Exhibits 2A and 2B, the Preliminary Form for Petition for Naturalization, and Government's Exhibits 2F and 2G, the triplicate copy of the Petition for Naturalization (Appendices "A" and "B" of this brief).

It is Exhibit 2A and 2B which contains Question 30, "Have you ever been arrested or charged with violation of any law of the United States or state or any city ordinance or traffic regulation?", to which appellant gave both the written and the oral answer, "No" [T. R. 39-40]. Exhibit 2G, the reverse side of the triplicate Petition, contains the notations made by Mr. Derringer, with regard to the questions which he orally asked the appellant while under oath, indicating that he again answered "No" to the arrest question, and with regard to the question as to organizations, that he said he belonged to the "Fraternal Benefit Society of International Workers Order where applicant is employed—no others" [T. R. 33-34]. It was Mr. Derringer's testimony that during this oral examination he also asked him, as found in the Findings and Judgment of the court, "whether he believed in Nazism, Communism or Fascism" and that the appellant answered "No" [T. R. 22].

The question of the validity of the arrests, or the necessity of a finding of concealment of a "valid" arrest, was not raised in the court below, and it is the general rule that the appeal is restricted to such questions and issues as were made and considered below and there decided, because the trial court cannot be guilty of any error in a ruling it has never made upon an issue to which its attention has never been called (see *Delgadillo v. Carmichael,* 332 U. S. 388, reversing 159 F. 2d 130, and *McComb v. Goldblatt Bros.,* 166 F. 2d 387). While there may be some exceptions to this general rule, under all of the circumstances this does not appear to be a case where an exception should be made. The mere citation in the District Court of the *Kessler* case does not raise the issue.

In any event, we think the point is not well taken, and the case of *United States v. Kessler* (C. A. 3), 213 F. 2d 53, strongly relied on by the appellant, is distinguishable from the present case in so many respects that it is of little value on the point. And in addition, the subsequent case of *United States v. Corrado,* 121 Fed. Supp. 75, 227 F. 2d 780, cert. den., 351 U. S. 925, clearly is contrary to Footnote 9 at page 58 of the *Kessler* decision.[2] Further, the *Corrado* case confirms the validity of denaturalization for failure to disclose membership in the Communist Party, as well as failure to disclose arrests. And the recent decision of this Court in *Stacher v. United States,* 258 F. 2d 112, cert. den., 358 U. S. 907, is in accord with the *Corrado* decision and was a case in which there was no finding of validity or invalidity of the arrests concealed, which were relied upon as the basis for the denaturalization.

In the *Kessler* case, as distinguished from the instant case, the defense of illegality of the arrests was asserted in the answer to the complaint, which answer admitted the arrests but denied the fraud. The defendant Kessler took the stand and testified at length that she had no intention of lying with regard to her understanding as to what was wanted by the question of the Immigration Examiner. The defendant there, while engaging in picketing during a labor dispute, had been arrested 17 times on charges of "obstructing the highway," had been brought before a magistrate each time and each time discharged. Her failure to reveal any of these arrests when questioned during her naturalization examination led to the institution of denaturalization proceedings. At the trial, she took the

---

[2]Footnote 9 in the *Kessler* case reads as follows: "We have found no decision and none has been cited to us where citizenship has been revoked for failure to disclose facts the revelation of which would have not justified refusal of citizenship in the first place. . . ."

witness stand and testified as to why she had given a negative answer to the question concerning arrests: The attorney for her union had told her on numerous occasions following her discharge that the arrests were illegal and that she had committed no crime cognizable at law. She testified it was her understanding she had committed no crime, had done nothing wrong; she had no intention of lying but did not understand the purport of the question at the time she answered it.

The Third Circuit's judgment in *Kessler* is therefore sustainable on the ground that the District Court's finding of wilful concealment is clearly erroneous on that record. The defendant, Chaunt, on the other hand, never took the stand to explain why he failed to disclose his arrests and upon being called by the Government, declined to answer any questions on the grounds of self incrimination. There is, therefore, nothing in the instant record on which to challenge the District Court's finding that Chaunt's concealment of his arrests was knowing and wilful. Assuming, *arguendo,* that the proposition that the applicant for naturalization is under no duty to disclose "false" arrests, once the Government has shown that the defendant has concealed an arrest, the burden should be on the defendant, to show by way of affirmative defense that the arrests were illegal. [See Exs. 1A to 1E for the Court's records on these arrests.]

In the *Corrado* case (C. A. 6, Dec. 16, 1955), Corrado, like Kessler, testified in his own behalf in an attempt to explain why he had not revealed the previous arrests. The testimony of the preliminary examiner who questioned Corrado was reflected in notations similar to the notations on the back of the triplicate copy of the petition in this instance. The court, in discussing the case, says, at pages 782 and 784:

> "The brunt of appellant's complaints on this appeal is that, unless the Government denied citizenship

on the unproven charges made in the warrants of arrest, his citizenship should not be canceled now for his deception in the statement that he had never been arrested, especially in view of the fact that his only convictions were for misdemeanors, or minor offenses. He throws in the proposition that fraudulent procurement of naturalization must be established by clear and convincing evidence, which, he says, has not been done in this case. Baumgartner v. United States, 322 U. S. 665, 64 S. Ct. 1240, 88 L. Ed. 1525; Schneiderman v. United States, 320 U. S. 118, 125, 63 S. Ct. 1333, 87 L. Ed. 1796; Knauer v. United States, 328 U. S. 654, 66 S. Ct. 1304, 90 L. ed. 1500. Appellant stresses as authority United States v. Kessler, 3 Cir., 213 F. 2d 53, wherein it was held that an applicant's denial in her petition for naturalization that she had ever been arrested was not ground for concellation of her naturalization certificate, where the Government stated that she had been arrested 17 times. The facts were, however, that all seventeen of her arrests had been illegal and invalid, inasmuch as the activity for which she was arrested consisted merely of peaceful picketing. She stated that she had answered 'no' to the question concerning her arrests for the reason that she had committed no crime, had done nothing wrong, had no intention of lying; and that she did not understand the purport of the question at the time she answered it. . . .

* * * * * * * *

"Upon analysis, the issue is not whether naturalization would have been denied appellant had he revealed his numerous arrests, but whether, by his false answers, the Government was denied the opportunity of investigating the moral character of appellant and the facts relating to his eligibility for citizenship.

How could any Government official or witness say whether or not citizenship would have been denied appellant from an investigation of the various causes of his arrest, when no opportunity for investigation was afforded? His false statement upon the material matter in actuality caused no investigation to be made. To be awarded citizenship in the United States exacts the highest standard of rectitude. Our Government should be afforded full opportunity for investigation of the moral character and fitness of an alien who seeks to be vested with all the rights, privileges and immunities of a natural born citizen of the United States. Where fraud has been practiced by the alien in procuring citizenship, it is not required that the Government in a denaturalization proceeding should meet the standard necessary for conviction in a criminal case. It will suffice to show that the applicant lied concerning a material fact which, if revealed, might have prevented his acquisition of citizenship.

"In three denaturalization proceedings, heard together on appeal to this court from the Eastern District of Michigan, we affirmed the respective judgments of District Judges Levin, Thornton and Picard: all revoking naturalization. Sweet v. United States (Chomiak v. United States, and Charnawola v. United States), 6 Cir., 211 F. 2d 118, 119. In the Sweet case, Judge Levin said that the *'testimony left no doubt that the defendant had concealed his history of Communist Party membership from the naturalization authorities and had thereby thwarted inquiry into his eligibility for naturalization.'* In the Chomiak case, Judge Thornton found convincing evidence that the denaturalized defendant had been a member of the Communist Party and, therefore, ineligible for citizenship; and that the defendant had procured his naturalization illegally. In the Charnowola case,

Judge Picard found that the defendant in naturalization proceedings had not truthfully answered the question asked by the examiner as to whether he had ever been a Communist and, therefore, had obtained citizenship by fraud. This court stated in its per curiam opinion that the findings of fact of the judge in each of the cases were supported by substantial evidence and were certainly not clearly erroneous; and that the conclusions of law in each case were based upon logically correct reasoning, supported by highest authority. (Emphasis added.)

"In United States ex rel. Volpe v. Smith, 7 Cir., 62 F. 2d 808, 812, which habeas corpus was denied in a deportation proceeding, Judge Evan Evans said: 'What the officer would have discovered, or might have discovered, had the inspection not been thwarted is beside the question. The inspection contemplated was defeated. In legal effect there was no inspection.' The same reasoning applies here.

"In Stevens v. United States, 7 Cir., 190 F. 2d 880, 881, Chief Judge Major said: 'We have no doubt but that a false statement knowingly made by an applicant for naturalization in the course of such proceeding would afford a proper basis for denying the application, and it is immaterial that the false statement knowingly made concerned violations which occurred previous to the five-year period.' Cf. United States v. Etheridge, D. C. Or., 41 F. 2d 762."

Moreover, we question the validity of the *Kessler* decision's thesis that the naturalization questonnaire contemplated only "legal" arrests. Analysis of the motivation behind such inquiries discloses a much broader Governmental interest. The naturalization statutes since the earliest days of our Republic have prescribed certain qualita-

tive prerequisites to citizenship, including, among others, that the applicant show himself to have behaved as a person of good moral character, attached to the principles of our Constitution, well disposed to the good order and happiness of the United States, etc. It is largely from the examination of the applicant himself that a determinaton can be made whether he meets the statutory standards. In such an examination, the United States is entitled to frank, honest and unequivocal information from the applicant (*United States v. Genovese,* 133 Fed. Supp. 820 (D. N. J.,1955), affd. 236 F. 2d 757 (C. A. 3, 1956), cert. den., 352 U. S. 952).

The naturalization statutes before the Immigration and Nationality Act of 1952 did not forbid naturalization because of conviction of crime[3] In fact, they made no mention of arrests or convictions. Yet, these items have been inquired into since the earliest times and such inquiries have been specifically commanded by regulation since 1929. The purpose of such interrogation is not served merely by ascertaining whether the applicant has an arrest record, for the presence or absence of such a record is not dispositive on the statutory qualifications. A person convicted of crime may still be able to meet the prescribed standards of good moral character. On the other hand, a person who has never been arrested may nevertheless fail to live up to the required moral standards. In determining whether the applicant measures up, his *conduct* is the crucial factor. The questions as to arrests, convictions, etc., have relevance

---

[3]Under Section 101(f) of the 1952 Act, certain convictions now preclude a showing of good moral character.

only insofar as the answers will shed light on the applicant's conduct, or will suggest further lines of inquiry.

Thus, for example, the fact that an applicant has been acquitted on a criminal charge does not make the fact of his arrest irrelevant; it may still be appropriate to inquire into the conduct which led to the arrest. The acquittal may have been due to various reasons. The arrest may have been for conduct which did not constitute a crime; or the evidence may not have been sufficient to establish guilt beyond a reasonable doubt. The defendant may have bribed or intimidated the witnesses against him. The acquittal may preclude further prosecution on the same charge, but it is not *res judicata* in a later civil proceeding. Thus, when a naturalization applicant discloses he has been arrested for allegedly violating a law, a new avenue of inquiry is opened up for the naturalization examiner. And when the applicant fails to disclose that he has been charged with law violations, he blocks lines of inquiry which might yield pertinent facts regarding his moral character.

It cannot be said that the question concerning arrests was designed to reveal only those which subsequently turned out to be "lawful." It is more likely that it was intended to extract from the applicant information concerning all law violations he had been charged with, information which would be useful to the naturalization examiner in determining whether, and to what extent, futher investigation was required. As Mr. Derringer's testimony discloses, this was actually the basis upon which the Immigration Service used the information, if disclosed.

The validity of the arrests may be relevant in a situation such as in *Kessler,* where the applicant had been acquitted, had been told repeatedly the arrests were not legal and had honestly thought that this information was not contemplated by the question. This is a far cry from the *Chaunt* situation, where there was at least one conviction, where there was no showing that the applicant believed the arrests illegal and failed to disclose them solely because he thought the question did not encompass them.

The District Court found as fact that Chaunt intentionally concealed the arrests. Assuming, without conceding, the invalidity of the charges, we do not believe that an applicant who has intentionally concealed his criminal record is relieved of the consequences of his fraud by the mere circumstance that it later turns out (unknown to him) that the arrests were unlawful. Quite the contrary, the cases all hold that the intentional misstatement of facts properly inquired into warrants the denial of naturalization, even though the truth itself, if revealed, would not have required denial. The materiality of the concealment lies in the fact that it blocks further inquiry, not necessarily on a showing that further investigation would have yielded adversely effective material (see *Del Guercio v. Pupko,* 160 F. 2d 799 (C. A. 9, 1947); *United States v. Lumantes,* 139 Fed. Supp. 574 (N. D. Cal., 1955), affd. 232 F. 2d 216 (C. A. 9, 1956); *Corrado v. United States,* 227 F. 2d 780 (C. A. 6, 1955), cert. den., 351 U. S. 925; *United States v. Genovese,* 133 Fed. Supp. 820 (D. N. J., 1955), affd. 236 F. 2d 757 (C. A. 3, 1956), cert. den., 352 U. S. 952).

III.

No Supreme Court Case Has Ever Held That a Naturalization Judgment Is Res Judicata and This Defense Is Not Available Regardless of Whether the Grounds for Denaturalization Are Lack of an Essential Qualification for Naturalization or That the Naturalization Was Obtained by Concealment or Misrepresentation.

In raising the question of *res judicata* of the naturalization decree, appellant makes a distinction between those cases where an essential requirement for naturalization is lacking and the court therefore lacked jurisdiction to naturalize, and a case where there was a concealment or misrepresentation as to a material fact which might not of itself have been an essential requirement for naturalization under the statutes.

We think it is immaterial in which category the case rests. It is clear that the Government has the right to denaturalize. This argument is also developed in some detail under Point II of this brief.

Nor is there any validity to the distinction which appellant makes (App. Br. 13) that under the new Section 340 "the Naturalization decree is vulnerable to attach upon fraud grounds only for what has traditionally been known as extrinsic fraud, and not for any misstatement occurring in the proceeding itself."

A clearer analysis of the matter is contained in Judge Yankwich's decision in *United States v. San Title,* 132 Fed. Supp. 185, a case similar in its grounds of denaturalization to the present one, and having analogous evidentiary matters.

The more important distinction is between (1) the naturalization granted as an *ex parte* application, where the Immigration Service recommends naturalization and the court grants it without any adversary court proceeding,

or the presentation of evidence by either side, and (2) the case where the Immigration Service recommends against granting naturalization and appears before the court and makes a showing in opposition to the denaturalization and on a contested hearing where both sides present evidence and argument and the court decides the matter. In the latter instance, it could better be argued, a contested issue of fact fully explored in the evidence by both sides might upon the finding of the court become *res judicata*. That is not the case here.

As to misrepresentation as to "attachment and allegiance" to the Constitution, as set forth by the outline of the oath in the petition for naturalization and as contained in the oath taken before the court at the time of naturalization, and as to the question of good moral character, we have two elements which under the statute, *supra,* are essential requirements before the court has jurisdiction to grant the naturalization. Appellant's brief appears to concede that as to such grounds the defense of *res judicata* does not apply.

In addition, in the present case, denaturalization is sought on the grounds of concealment of arrests and concealment of membership in the Communist Party, and misrepresentation as to these two items, neither of which is essential to qualify for naturalization, but both of which, if concealed, result in concealment of material facts which as a result prevent the Immigration Service from discovering matters which might result in a recommendation against naturalization. As we understand appellant's argument then, it is that as to these latter two grounds for denaturalization, as contained in the First Cause of Action for concealment and in the Second Cause of Action for misrepresentation, the appellant contends that those items were made *res judicata* by the naturalization decree. And appellant's brief (App. Br. 12) seems to infer that there

were issues here which were "actually litigated or subject to litigation."

It is clear from the testimony of Calvin Derringer, the Immigration Examiner in this case, that the failure to disclose prior arrests and membership and officership in the Communist Party left the record before the Immigration Service in such a state that there was nothing on its face to require any further investigation [T. R. 65, 66, 82, 97], and the recommendation to grant naturalization was made without knowledge of these facts. There was therefore no contested hearing before the naturalization court on either of these questions, and, in fact, no issue was ever raised as to them, and there was therefore no finding on either question by the naturalizing court which could remotely be reconsidered *res judicata*. None of the cases cited by appellant so holds.

An extensive memorandum on this point was presented to the District Court, and for the convenience of this Court we here set out, in chronological order of their decisions, the Supreme Court cases decided before *United States v. Bridges,* 346 U. S. 209, the lower court cases decided after the *Maney* case, and the important cases subsequent to the *Bridges* case, and thereafter analyze them.

Supreme Court Cases Before United States v. Bridges:

Johannessen v. United States, 225 U. S. 227 (1912);

Luria v. United States, 231 U. S. 9 (1913);

United States v. Ness, 245 U. S. 319 (1917);

United States v. Ginsberg, 243 U. S. 472 (1917);

Tutun v. United States, 270 U. S. 568 (1926);

Maney v. United States, 278 U. S. 17 (1928);

Schneiderman v. United States, 320 U. S. 118 (1943);

Baumgartner v. United States, 322 U. S. 665 (1944);

Knauer v. United States, 328 U. S. 654 (1946).

Lower Court Cases Prior to Maney v. United States:

United States v. Mulvey, 232 Fed. 513 (C. A. 2, 1916);

United States v. Leles, 236 Fed. 784 (D. C., N. D. Cal., 1916);

United States v. Ovens, 13 F. 2d 376 (C. A. 4, 1926);

United States v. Pandit, 15 F. 2d 285 (C. A. 9, 1926);

United States v. Gokhale, 26 F. 2d 360 (C. A. 2, 1928);

United States v. Richmond, 17 F. 2d 28 (C. A. 3, 1927);

United States v. Srednik, 19 F. 2d 71 (C. A. 3, 1927);

United States v. Ali, 20 F. 2d 998 (E. D. Mich., 1927).

Lower Court Cases After Maney:

Turlej v. United States, 31 F. 2d 696 (C. A. 8, 1929);

United States v. Bischof, 48 F. 2d 538 (C. A. 2, 1931);

Sourino v. United States, 86 F. 2d 209, 300 U. S. 661 (C. A. 5, 1936);

United States v. Anger, 26 F. 2d 114 (D. C., S. D. N. Y., 1928);

United States v. Parisi, 24 Fed. Supp. 414 (Md., 1938);

United States v. Konevitch, 67 Fed. Supp. 215 (D. C., M. D. Pa., 1946).

Bridges Criminal Case and Subsequent Cases:

United States v. Bridges, 346 U. S. 209;

United States v. Sweet and Charnowola, 106 Fed. Supp. 634 (E. D. Mich., 1952), 109 Fed. Supp. 810 (E. D. Mich., 1953), both affd., 211 F. 2d 118 (C. A. 6, 1954), cert. den., 348 U. S. 817;

Accardo v. United States, 208 F. 2d 632, 113 Fed. Supp. 783, cert. den. (Oct. Term, 1953—No. 614);

United States v. Lurtig, 110 Fed. Supp. 806 (S. D. N. Y., 1953);

United States v. Cufari, 120 Fed. Supp. 941, 217 F. 2d 404 (D. C. Mass., 1954);

Stacher v. United States, 258 F. 2d 112, cert. den., 358 U. S. 907.

Other Cases Since 1954 Which Have Considered the Question of Res Judicata Are:

United States v. Jerome, 115 Fed. Supp. 818 (S. D. N. Y., 1953);

United States v. Candela, 131 Fed. Supp. 249 (S. D. N. Y., 1954);

United States v. Bridges, 123 Fed. Supp. 705 (N. D. Cal., 1954);

United States v. Fisher, 137 Fed. Supp. 519 (N. D. Ill., 1955), reversed on other grounds, 258 F. 2d 362 (C. A. 7, 1958);

United States v. De Lucia, 256 F. 2d 487 (C. A. 7, 1958), cert. den., 358 U. S. 836;

United States v. Chandler, 132 Fed. Supp. 650 (D. Md., 1955);

United States v. Polites, 127 Fed. Supp. 768 (E. D. Mich., 1953).

The Basic Statute.

A statutory basis for the revocation of naturalization on the ground of illegal or fraudulent procurement was first provided in Section 15, Act of June 29, 1906 (34 Stat. 601), which made it the duty of the United States Attorneys, upon affidavit showing good cause therefor, to institute judicial proceedings in any court having jurisdiction to naturalize aliens, for the purpose of setting aside and cancelling a certificate of citizenship on the ground of fraudulent or illegal procurement. The provisions of Section 15 were carried over without material change to the Nationality Act of 1940 (8 U. S. C. (1946 Ed.) 738). Section 11 of the 1906 Act, also carried over into the 1940 Act *(Op. Cit.,* Sec. 734), authorized the United States to appear in opposition to the naturalization of any alien. Similar provisions are contained in 8 U. S. C., Secs. 1451 and 1447(d) of the 1952 Act.

Cases Preceding Supreme Court Decision in Bridges' Criminal Case.

A. Supreme Court Cases.

The application of the doctrine of *res judicata* in a cancellation case was first discussed in the Supreme Court in *Johannessen v. United States,* 225 U. S. 227 (1912). There, the Court had under consideration an action under Section 15 to cancel a certificate of naturalization, granted by a State court long prior to the adoption of the 1906 Act, on the ground that the certificate was fraudulently and illegally procured in that the certificate was based on the perjured testimony of two witnesses that Johannessen had resided in the United States for the period prescribed by statute as a condition to naturalization. The court stated (pp. 238-239) that the foundation of the doctrine of *res judicata*, or estoppel by judgment, is that both parties have had their day in court;

that *uncontested naturalization proceedings were in the nature of ex parte proceedings;* and that grants of naturalization were like public grants, which may be revoked for fraud. The Court, therefore, refused to accord the State Court judgment conclusive effect.[4] The opinion expressly left undecided the question whether the contest by the Government under Section 11 of a naturalization would render the naturalization judgment immune from later attack under Section 15 on the ground that the naturalization was illegally procured.

The question was answered in the negative in *United States v. Ness,* 245 U. S. 319 (Nov., 1917). In this case, the Government prayed for the cancellation of a naturalization certificate on the ground that it had been illegally procured because Ness had not filed a certificate of arrival with his petition for naturalization as required by law. The United States, through a chief naturalization examiner, had appeared in opposition to the grant of naturalization and had filed a motion that the naturalization petition be dismissed on the ground of the failure to file the certificate of arrival. Although Ness admitted in the cancellation action his failure to file the certificate, he contended that the issue was *res judicata.* The Court, speaking through Mr. Justice Brandeis, rejected the contention, stating (p. 325, *et seq.*):

> The remedy afforded by §15 for setting aside certificates of naturalization is broader than that afforded in equity, independently of statute, to set aside judgments, *United States v. Throckmorton,* 98 U. S. 61; *Kibbe v. Benson,* 17 Wall. 624; but it is

---

[4]The *Johannessen* case was affirmed in *Luria v. United States,* 231 U. S. 9 (1913), and *United States v. Ginsberg,* 243 U. S. 472 (1917). In *Ginsberg,* the Court, after a mere reference to *Johannessen,* set aside a naturalization, which had been granted in chambers, on the ground that the applicable statute required the hearing to be in open court.

narrower in scope than the protection offered under §11. Opposition to the granting of a petition for naturalization may prevail, because of objections to the competency or weight of evidence or the credibility of witnesses, or mere irregularities in procedure. A decision on such minor questions, at least of a state court of naturalization is, though clearly erroneous, conclusive even as against the United States if it entered an appearance under §11. For Congress did not see fit to provide for a direct review by writ of error or appeal. But where fraud or illegality is charged, the Act affords, under §15, a remedy by an independent suit "in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit." If this suit is brought in the federal District Court, its decision will also be subject, under the general law, to review by the Circuit Court of Appeals, and, on certiorari, by this court. Such an independent suit necessarily involves considerable delay and expense; and it may subject the individual to great hardship. On the other hand, a contest in the court naturalization is usually disposed of expeditiously and with little expense. The interest of all concerned is advanced by encouraging the presentation of known objections to naturalization at the earliest possible stage of the proceedings; so that the petitioner may, if the defects are remediable, remove them, and if not, may adopt, without delay, such course, if any, as will ultimately entitle him to citizenship. It would have defeated this purpose to compel the United States to refrain from presenting any objection, or the objection of illegality, in the court of naturalization, unless it is willing to accept the dicision of that court as final.

> It was the purpose of Congress, by providing for appearances under §11, to aid the court of naturalization in arriving at a correct decision and so to minimize the necessity for independent suits under §15. In most cases this assistance could be given best by an experienced examiner of the Bureau of Naturalization familiar with the sources of information. Section 11, unlike §15, does not specifically provide that action thereunder shall be taken by the United States district attorneys; and if appearance under §11 on behalf of the Government should be held to create an estoppel, no good reason appears why it should not arise, equally whether the appearance is by the duly authorized examiner or by the United States attorney. But in our opinion §11 and §15 were designed to afford cumulative protection against fraudulent or illegal naturalization. The decision of the Circuit Court of Appeals is therefore *reversed.*

It was not until *Tutun v. United States,* 270 U. S. 568, 578-580 (1926) that the Supreme Court decided that a right of appeal lay from a judgment of a district court in a naturalization proceeding. Previously there had been a split among the circuits on the point. That the *Tatum* decision did not require the adoption of a different rule that the Court had previously announced on the *res judicata* point was made apparent by *Maney v. United States,* 278 U. S. 17 (Oct., 1928). There, the question was whether a naturalization was illegally procured in that the certificate of arrival was not filed with the petition for naturalization even though the naturalization court issued a *nunc pro tunc* order that the certificate be filed as of the date of the filing of the petition. The grant of the petition had been formally opposed by the Government.

The Court held that the order was invalid. In the course of the opinion, Mr. Justice Holmes stated (pp. 22-23):

"We are of the opinion that the Circuit Court of Appeals was right in holding that the filing with the petition of the certificate of arrival was a condition attached to the power of the court. Although the proceedings for admission are not judicial, *Tatum v. United States,* 270 U. S. 568, they are not for the usual purpose of vindicating an existing right but for the purpose of getting granted to an alien rights that do not yet exist. Hence not only the conditions attached to the grant, but those attached to the power of the instrument used by the United States to make the grant must be complied with strictly, as in other instances of Government gifts. By §4 of the Act an alien may be admitted to become a citizen of the United States in the manner prescribed, 'and not otherwise.' And by the same section the certificate from the Department of Labor is to be filed 'at the time of filing the petition.' (C., §§372, 379.) The form provided by §27 (C., §409) alleges that the certificate is attached to and made a part of the petition. The Regulations of the Secretary of Labor embodied our interpretation of the law, and would have warned the petitioner if she had consulted them. Rule 5, Ed. February 15, 1917; Ed. September 24, 1920. *United States v. Ness,* 245 U. S. 319, 323. It already has been decided that the filing of the certificate is an essential prerequisite to a valid order of naturalization, *United States v. Ness, supra,* and that a hearing in chambers adjoining the Courtroom does not satisfy the requirement of a hearing in open Court. *United States v. Ginsberg,* 243 U. S. 472.

"As the certificate of citizenship was illegally obtained, the express words of §15 authorize this pro-

ceeding to have it cancelled. The judgment attached did not make the matter res judicata, as against the statutory provisions for review. The difference between this and ordinary cases already has been pointed out and would be enough to warrant a special treatment to say that a record that discloses on its face that the judgment transcends the power of the judge may be declared void in the interest of the sovereign who gave to the judge whatever power he had."

Until *Schneiderman v. United States,* 320 U. S. 118 (1943), the Government had prevailed in every denaturalization case that reached the Supreme Court. There the Court reversed the trend. For present purposes, however, that case is important only for what it did not decide. The Court assumed that a naturalization decree could be reexamined on a charge that it was illegally procured because the finding of attachment to the Constitution was erroneous. It assumed also that the denaturalization statute was constitutional. The majority did not attach any significance to the fact of appearance or lack of it by the Government in the naturalization proceedings. After pointing out that under Section 11 of the 1906 Act the United States had the right to appear, to cross-examine, to introduce evidence and to oppose the petition, the Court said (p. 123):

> "The record before us does not reveal the circumstances under which the petitioner was naturalized except that it took place in open court. We do not know whether or not the Government exercised its right to appear and appeal. *Whether it did or not, the hard fact remains that we are here re-examining a judgment, and the rights solemnly conferred under it.*" (Emphasis ours.)

The Court seemingly questioned (p. 124, fn. 3) the analogy drawn in the *Johannessen* case between a naturalization decree and a public grant of land or of letters patent—"the permissible area of re-examination is different in the two situations." The Court also seemed to question the power of Congress to re-examine naturalization decrees except for extrinsic or collateral fraud. Mr. Justice Douglas, in a concurring opinion, relied principally on the rather tenuous assumption that the statute had made the finding of the naturalization court the criterion and that in the absence of fraud the finding of attachment could not be disturbed. Mr. Justice Rutledge also questioned the power to attack naturalization judgments. The dissenting opinion of Chief Justice Stone charged that the Court had not followed its prior decisions.

In *Baumgartner v. United States,* 322 U. S. 665 (1944), the Court had under review a judgment affirming a district court order sustaining a petition for cancellation of a naturalization on the grounds of fraud and illegality in that Baumgartner did not intend fully to renounce his allegiance to Germany and did not intend to support the Constitution and Laws of the United States. There, Baumgartner argued (Br. p. 39) that a naturalization decree could be set aside only on the ground of extrinsic fraud or errors on the face of the record. In the majority opinion, Mr. Justice Frankfurter said (p. 672) that "even if objective falsity as against perjurious falsity of the oath is to be deemed sufficient under §338(a) of the Nationality Act of 1940 to revoke an admission to citizenship, it is our view that the evidence does not measure up to the standard of proof which must be applied to this case." But the Justice went on to say (p. 675) that "No doubt the statutory procedure for naturalization (§334, Nationality Act of 1940), and §338, with which we are here concerned, 'were designed to afford cumulative protection against fraudulent or illegal naturalization.' "

The last case in which a majority of the Supreme Court issued an opinion on the *res judicata* point is *Knauer v. United States,* 328 U. S. 654, where the Court sustained a judgment cancelling Knauer's naturalization on the grounds that he was not attached to the principles of the Constitution and that he had taken a false oath of allegiance. The Court said (pp. 670-671):

> "* * * We need not consider the extent to which a decree of naturalization may constitute a final determination of issues of fact, the establishment of which Congress has made conditions precedent to naturalization. * * * [T]he issue of fraud in the oath cannot become *res judicata* in the decree sought to be set aside. For fraud in the oath was not in issue in the proceedings and neither was adjudicated nor could have been adjudicated."

B. Lower Court Cases.

1. Prior to *United States v. Maney,* 278 U. S. 17 (1928).

In *United States v. Mulvey,* 232 Fed. 513 (C. C. A. 2, 1916), the claim was made that, as the Government was given by Section 11 of the Naturalization Act the right to appear in Naturalization Proceedings and to be heard in opposition, it is bound by the order of the court in granting naturalization, unless it sues out a writ of error. No writ was obtained. Instead the Government filed a petition in the District Court asking for the cancellation of the certificate. The petition was dismissed, an appeal was taken and the Court reversed with instructions to issue an order of cancellation. The Circuit Court of Appeals held that a naturalization proceeding is not adversary in its nature, citing *Johannessen v. United States,* 225 U. S. 227. It also held that the appearance of a representative of the Bureau of Naturalization before the District Court when the application for citizenship

was granted was an *amicus curiae* to present to the court such facts relative to the personal history of applicants as the Bureau's investigations may have disclosed. The Court also stated (p. 518): "The order admitting the respondent to citizenship recites no appearance by the Government on the hearing, no minutes of the testimony were taken, and no record preserved. Under such circumstances we do not thing that the appearance of a representative of the Bureau . . . is to be regarded as an appearance by the United States . . . The United States, therefore, is not so bound by the decree that it is not entitled to proceed by petition to cancel the certificate so used." In a dissent one judge pointed out that Section 15 authorized suits only for fraud and illegality and not for the correction of error. He would have affirmed on the ground that while there may have been an erroneous grant it was not illegal. Further he found that the United States was represented at the hearing and then and there objected to the granting of citizenship. In *United States v. Ness, supra* (245 U. S. 219, 327, fn. 1), the Supreme Court referred to the *Mulvey* case and said that in view of the language of Section 11 ("The *United States* shall have the right to appear . . .") the facts that the Bureau representative was not a law officer of the Government was not of importance.

In *United States v. Ovens,* 13 F. 2d 376 (C. C. A. 4, 1926), the Government did not appeal from an order refusing to cancel a certificate of naturalization but proceeded under Section 15 to set aside the certificate on the ground of illegal procurement. The District Court dismissed the suit on the theory that the United States was estopped by the judgment of the State Court admitting defendant to citizenship. In reversing the Court held that that Section 15 provided a new remedy which is in some respects broader than the protection afforded the United States by Section 11. The Court also specifically referred to *Tutun v. United States, supra,* which first

authoritatively upheld the existence of appellate jurisdiction in naturalization cases.

In *United States v. Pandit,* 15 F. 2d 285 (C. C. A. 9, 1926), the United States sought cancellation under Section 15 of a naturalization of a Hindu on the ground that he was racially ineligible. The Ninth Circuit held that a naturalization examiner's objection to the grant of citizenship on that ground rendered the issue *res judicata.* Although certiorari was denied (273 U. S. 759), the decision is highly questionable as a precedent since it made no reference to *Ness;* the dissenting circuit judge in *Maney* relied on it (*Pandit*) 21 F. 2d 28, 29; and it was unsuccessfully argued in the Supreme Court in opposition to the position the court ultimately adopted there.

Moreover, the Circuit Court of Appeals for the Second Circuit in *United States v. Gokhale,* 26 F. 2d 360 (1928), found no merit in the *Pandit* decision. In the *Gokhale* case the Court assumed that the United States had in fact the opportunity to appear in opposition and was represented although apparently no issue of fact was raised. Relying on *United States v. Ginsberg, supra,* fn. 1, and the *Ness* case, *supra,* the Court held that when a necessary prerequisite to naturalization was missing (Gokhale was a Hindu), a bill under Section 15 would lie as a cumulative remedy.

Tutun v. United States, supra.[5]

---

[5]Certiorari was granted in the *Gokhale* case, 278 U. S. 591, and the cause was later remanded with directions to dismiss the complaint pursuant to stipulation and on motion of the Solicitor General, 278 U. S. 622. The reasons do not appear. In connection with the Hindu cases see *United States v. Thind,* 261 U. S. 204, which held, in 1922, that a high-caste Hindu could not become a citizen of the United States.

In *United States v. Richmond,* 17 F. 2d 28 (C. C. A. 3, 1927) the Government did not appeal from an order granting a certificate of naturalization but instead instituted an independent proceeding to cancel the certificate under Section 15. There were no after discovered facts.

The primary question involved was whether the certificate was "illegally procured" and the Court concluded that it was not, within the meaning of Section 15, but was an irregularity in procedure, correctable on appeal, emphasizing that the Government was present at the naturalization hearing. This conclusion was affirmed by the Third Circuit in *United States v. Srednik,* 19 F. 2d 71, (1927). These cases adopt the reasoning that to the words "procured" and "illegally procured," coupled in Section 15 with fraud, must be attributed the purpose of Congress "to use evidencing a positive, affirmative act on the part of the procurer, and one of a sinister character."[6] These cases, like *Pandit,* are doubtful precedents since they were urged and apparently rejected in the Supreme Court in *Maney.*

United States v. Leles, 236 Fed. 784 (D. C. N. D. Calif., 1916), involved a proceeding under Section 15 to cancel a certificate of naturalization both on the ground of fraud in its procurement, in that the defendant was not at the time of good moral character, and that it was illegally granted for failure to follow the proper method of proof. An agent of the Naturalization Bureau was present at the hearing and participated in the interrogation of witnesses and the contention was made that the proceed-

---

[6]In the *Richmond* case the only irregularity involved was that the judge left the courtroom while the applicant and his witnesses made their proof before the clerk. It is simple, therefore, to square this decision with the *Ness* doctrine. In *Srednik* the alleged defect was that the applicant had not resided in the United States during the statutory period required.

ings were thus made adversary, *res judicata* applying. The Court held, however, that the Government was not estopped by the judgment granting the certificate. At page 788 the court said:

> "But it urged that in the Johannessen case the certificate was issued under the old statute,[7] and the Court expressly refrained from determining whether the present Act, of which this is one, are to be regarded as equally of an ex parte character as those under the old, where the proceeding was had without notice to the Government. The reasoning in that case, however, would seem to land countenance to the contention of the Government that the mere appearance at the hearing of the agent of the Naturalization Bureau to interrogate the witnesses, without filing any pleading making specific objection to the granting of a certificate or putting in issue any of the averments of the petition, cannot have the effect of converting the proceeding from an ex parte to an adversary one, in a sense to make the doctrine of *res judicata* apply.
>
> * * * * * * * *
>
> "Within this definition[8] the presence of an agent of the Bureau of Naturalization, a mere administrative officer, should not be regarded as an 'appearance' for the purpose of litigating the matter in a sense to make it an adversary proceeding. The agent

---

[7]Prior to the Act of June 29, 1906, there was no comparable provision to Section 15.

[8]In *Johannessen* the court at page 238 held that "the foundation of the doctrine of *res judicata,* or estoppel by judgment, is that both parties have had their day in court. . . . The general principle was clearly expressed . . . in *Southern Pacific v. United States,* 168 U. S. 1, 48 . . . 'that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies.' "

is present, and is usually as in this instance, permitted to interrogate the applicant and his witnesses; but aside from this, the proceeding is no more in its nature an adversary one or less ex parte than under the old Act. The Government is not present as an adversary, but simply for the purpose of supervision of the proceedings through the medium of its Naturalization Bureau. What the effect would be of a formal appearance by the law officers of the Government, putting in issue the averments of the petition and calling adverse witnesses in support thereof, need not be determined."[9]

United States v. Ali, 20 F. 2d 998 (E. D. Mich., 1927), is important particularly because it refused to follow *United States v. Pandit, supra.* There the Court, in another Hindu case, ruled squarely that a previous decision of the Court granting a certificate is not, although rendered in a legal proceeding between the same parties, *res judicata,* citing the *Ness* case and mentioning that *Pandit* had not taken that decision into consideration.[10]

2. Lower Court Decisions after *United States v. Maney,* 278 U. S. 17 (1928).

The bill of complaint in *Turlej v. United States,* 31 F. 2d 696 (C. C. A. 8, 1929), sought cancellation on the sole ground of fraud including fraud in the oath.[11] The

---

[9]Accord: *United States v. Albertini,* 206 Fed. 133 (D. Mont., 1913).

[10]The opinion in the *Ali* case does not indicate whether the Government appeared in the naturalization court. See also *United States v. Ali,* 7 F. 2d 728, holding that an order admitting the defendant to citizenship was not *res judicata.*

[11]The complaint seeking revocation alleged prior convictions which the defendant admitted at the time of the naturalization hearing.

defense was *res judicata.* It also appears that a Naturalization Examiner challenged Turlej's qualifications at the time the certficate was granted. The lower court cancelled the certificate and the judgment was affirmed. The Circuit Court of Appeals remarked that "neither can the contention be sustained that his admission to citizenship, with the facts of his previous infraction of the law before the Court, is such an adjudication as to bar review. The decisions of the United States Supreme Court (*Johannessen* and Ginsberg) are complete answers." Further, the Court said that "It *is not within the power of the agencies of the Government to make the grant or gift of citizenship, if the applicant fails to meet these requirements.*" (Emphasis supplied.) It should be noted, however, that the appellate court placed the revocation on the ground of fraud and not illegal procurement, stating at page 699:

> ". . . the state court made a mistake in granting appellant citizenship. Appellant did not possess the requisite qualifications, and the court was so advised. However, the court was induced to make such mistake by the frankness of the appellant in admitting his offense, and his avowal, under oath, that he was then attached to the principles of the Constitution. The facts, however, discredit his assertion. He was not qualified for citizenship, but deceived the court into believing that he was. Such deceition operated as a fraud upon the court, and this deceition and fraud were evidenced by his subsequent, as well as prior, conduct."

United States v. Bischof, 48 F. 2d 538 (C. C. A. 2, 1931), involves a cancellation for lack of good character. At the time of the hearing in the State Court, the Govern-

ment objected to the granting of a certificate since Bischof had been divorced on the ground of adultery and was, therefore, not of good character. It was also conceded "that all the facts which are now presented to the Court were presented to (the State Court) at the time of the granting of naturalization." The lower court dismissed the bill for want of equity and the appellate court affirmed. The *Bischof* case follows the reasoning of earlier Third Circuit cases such as, *United States v. Srednik,* and *United States v. Richmond, supra.* All draw a line between jurisdictional prerequisites such as lack of a certificate of arrival (*Ness* case) and mere fact finding. They purport to find some basis for this tenuous distinction in dictum found in the *Ness* case to the effect that a decision on "minor" questions such as the competency or weight of the evidence, and the credibility of witnesses, at least of a state court of naturalization, is, though clearly erroneous, conclusive even as against the United States if it entered an appearance under Section 11. These cases, at best, are of questionable value and take unwarranted liberties with the holding in the *Ness* case.[12]

In *Sourino v. United States,* 86 F. 2d 209, 300 U. S. 661 (C. C. A. 5, 1936) appellant's acquittal in a criminal prosecution for fraudulent procurement of naturalization was held not *res judicata* of issue whether his certificate had been fraudulently procured, or to constitute estoppel by judgment in a subsequent proceeding for cancellation of the certificate. The Court held that the same cause of action was not involved especially where the sole issue in the criminal case was the bar of the statute of limitations.

---

[12]In cases adopting the above view of *Ginsberg,* the courts review the facts irrespective of the claims of *res judicata.* See, *e.g.,* the *Unger, infra,* and *Gokhale* cases, *supra.* Bischof was urged and rejected in the *Chomiak* case, *infra.*

United States v. Unger, 26 F. 2d 114 (D. C. S. D. N. Y., 1928), involved a suit to cancel a certificate for lack of good moral character. In 1924 the Supreme Court of New York entered a decree admitting Unger to citizenship although it was brought to the Court's attention on the final hearing that a decree of divorce had been entered against him in 1923 on the ground of adultery. The United States had also opposed in the naturalization proceedings the granting of the decree of citizenship. The defendant raised the issue of *res judicata.* The Court cancelled the certificate on the ground that a necessary qualification (good moral character) must *in fact* exist and that if it doesn't, it "conclusively" follows that his citizenship was illegally procured. The Court adhered to the principles laid down in the *Ness, Tutun, Johannessen* and *Ginsberg* cases, *supra.* In the latter, the Supreme Court, stated: 243 U. S. 472 and 475:

> "No alien has the slightest right to naturalization unless all stautory requirements are complied with; and every certificate of citizenship must be treated as granted upon condition that the Government may challenge it as provided in Section 15 and demand its cancellation unless issued in accordance with such requirements. If procured when prescribed qualifications have no existence in fact it is illegally procured; a manifest mistake by the judge cannot supply these nor render their existence nonessential."

In *United States v. Parisi,* 24 Fed. Supp. 414 (Md), 1938, a certificate was cancelled for misrepresentation as to the basic stautory conditions with respect to lawful entry and residence although not made fraudulently. No opposition was offered by the Government to the naturalization order although there is some indication that it must have been apparent to custom officials that he was not entitled to enter the country.

In *United States v. Konevitch,* 67 Fed. Supp. 414 (D. Md.) it was held that the fact the Immigration Service may have known of an applicant's lack of good moral character was irrelevant since illegal procurement in addition to fraud was charged.

For other cases bearing on the question of *res judicata* see:

United States v. Doola, 177 Fed. 101 (C. C. A. 5);

United States v. Holtz, 54 Fed. Supp. 63 (N. D. Calif.) rev. *sub nom;*

Bechtel v. United States, 176 F. 2d 741 (C. A. 9);

United States v. Schenier, 55 Fed. Supp. 243 (Ore.), rev. on other grounds, *sub nom. Schenier v. United States,* 150 F. 2d 535 (C. A. 9);

United States v. Brass, 37 Fed. Supp. 698 (E. D. N. Y.);

United States v. Korner, 56 Fed. Supp. 242 (S. D. Calif.);

United States v. Kusche, 56 Fed. Supp. 201 (S. D. Calif.).

The Bridges Criminal Case and Subsequent Opinions.

In the *Bridges* criminal case, 346 U. S. 209, two questions were presented: Whether the prosecution was barred (1) by the statute of limitations, or (2) by the principles of *res judicata,* estoppel, or due process. The majority disposed of the case on the first ground, without considering the second question. However, the minority (consisting of the Late Chief Justice Vinson and Justices Reed and Minton) said (pp. 233-234):

> "We therefore would affirm the judgment below as to Count I. Petitioners have also contended here that the conviction is barred because the principles of *res judicata* or collateral estoppel require us to hold that

Bridges' nonmembership during the crucial period has been judicially determined. They point to the Landis proceedings of 1938, referred to in *Bridges v. Wixon,* 326 U. S. 135, 138, this Court's decision in that case, and the naturalization proceedings themselves of 1945. None of these, though, are *res judicata* since this is a criminal cause. Nor can collateral estoppel be invoked. There has been no court holding that Bridges has not been a Communist. The Landis determination of the membership was not a judicial one. *Pearson v. Williams,* 202 U. S. 281. In *Bridges v. Wixon, supra,* no holding on the factual question of membership was reached. And the naturalization proceedings did not determine nonmembership because Bridges could legally have been granted citizenship even had he been found by the Court to have been a member of the Communist Party. See 8 U.S.C. (1946 ed.) sections 705, 707, which merely prohibited grant of naturalization to members of organizations advocating the overthrow of the government, or to those not attached to the Constitution. This has been changed. 8 U. S. C. section 1424(a) (2). There is no necessary identity in law between Communist Party members and such persons. See: *Schneidermann v. United States,* 320 U. S. 118; Cf. *Carlson v. Landon,* 342 U. S. 524, 536, n. 22."

In the recent Sixth Circuit denaturalization appeals in the *Sweet, Chomiak* and *Charnowola* cases, the defense of *res judicata* was raised. The Court of Appeals did not specifically refer to the contention, but it must be assumed that the contention was rejected, for the Court said:

"We have given due consideration to the excellent oral argument and well-prepared briefs of the astute attorney for the three appellants which present from his viewpoint, as strong as could be stated, alleged

reasons for reversal of the three separate judgments of the several district judges, but we are of the opinion that no error has been shown to inhere in the judgments."

Incident to the petition for certiorari in *Settimo Accardo v. United States* (Oct. Term 1953, No. 614) to review the judgment of the Third Circuit *(per curiam* opinion, 208 F. 2d 632) sustaining the denaturalization of Accardo (113 Fed. Supp. 783), the issue of *res judicata* was again raised, and certiorari was denied. In that case, the complaint charged that the denaturalization was fraudulently and illegally obtained in that Accardo had failed to disclose a number of difficulties with the law. The district court judge stated with respect to the case (113 Fed. Supp. at p. 785):

"* * * Defendant further claims this conviction was known to the authorities when he entered this country the second time, at Montreal, several years earlier than his naturalization. But this information was never known to the Naturalization authorities, but only to the Department of State, which issued his visa, and to an entirely separate branch of the Immigration Office, having nothing to do with naturalization. The Naturalization authorities cannot be charged with notice of what they did not, in fact, know when this fact was known only to such widely different branches of the Government. *United States v. Riggins,* 9 Cir., 1933, 65 F. 2d 750; *United States v. Depew,* 10 Cir., 1938, 100 F. 2d 725; *Halverson v. United States,* 7 Cir., 1941, 121 F. 2d 420."

Defendant further claims that, since all the above arrest and conviction data was known to the United States Probation Office, the United States Naturalization officials

should be charged with notice of same, even though they did not know it in fact. This is on the tenuous theory that defendant's mere mention during the naturalization proceedings of the fact tht he had been put on probation for an entirely different crime, put the Naturalization officials on notice of everything which all the files of the United States Probation Office, not the Naturalization Office, contained. If this contention were correct, then, since the Probation Office is an arm of this Court, this Court, which naturalized defendant, would, *a fortiori,* not have been at all misled by defendant's failure to disclose any arrest or conviction which appeared in its probation records. In short, when questioned as to his record, defendant need have disclosed nothing. This argument answers itself.

All the above, save the 1926 and 1940 records not relied on by plaintiff, go to the question of defendant's fraud as grounds for the revocation of his naturalization. Thus we find that the Naturalization court had before it, not a man who had but a single conviction, and another arrest, as it supposed, but a man who had frequently been in trouble with the authorities over the course of some fifteen years prior to the time of his naturalization. It was defendant's duty to disclose an arrest, as well as a conviction, in order that the Government might investigate before granting the decree. *Gaglione v. United States,* 1 Cir., 1929, 35 F. 2d 496; in re Paoli, D. C. Cal. 1943, 49 Fed. Supp. 128. That defendant's wilful failure to disclose this situation to the authorities had a material effect upon the action of the Naturalization officials and the Court in its decision to grant the decree, is undoubted. Particularly is this the case, since even the limited disclosures of the defendant were not passed on by the immigration officials, even tentatively, but referred to the Court for its own decision thereon.

Summation of Argument.

There is no Supreme Court Case which holds that the doctrine of *res judicata* applies to denaturalization judgments, the strongest language to indicate that it does being the dictum in *Schneiderman*. And, in general, the lower courts have refrained from applying the doctrine to such judgments. It is true, as has been shown, that the Ninth Circuit in *Pandit,* the Second Circuit in *Bischof,* and the Third Circuit in *Richmond* and *Srednik* applied to the doctrine. All but *Bischof* can be explained away by the fact that they were rejected by the Supreme Court decision in *Maney* and take unwarranted conclusions from the dictum in *Ness*. *Bischof* can be distinguished in that there was no specific objection raised to Bridges' naturalization, and it may be noted that *Bischof* was predicated on the theory that a mere irregularity, as distinguished from statutory illegality, was involved.

The dictum in *Schneiderman* is more than off-set by the strong language in the dissent in *Bridges*.

Finally, Section 338 of the 1940 Act and 1451 of the 1952 Act presuppose that, in addition to objecting to naturalization during the naturalization proceedings, the United States shall have the right to institute revocation proceedings.

A recent case is *United States v. Cufari* (D. C. Mass. 1954) 120 Fed. Supp. 941, reversed on other grounds 217 F. 2d 404, where the court held that the order admitting alien to citizenship is not *res judicata*.

And in *Stacher v. United States, supra,* this Court's decision affirming denaturalization, noted that the defense of *res judicata* had been raised in the district court, in a case where denaturalization was granted for concealment

of prior arrests, and certiorari was denied by the Supreme Court.

Quotations from the restatement of judgments (Appellant's Br. 17) are not helpful on the question, because there the judgment referred to is obviously after a contested trial of the issues, whereas, the vital distinction in a naturalization proceeding is that, unless something arises which provokes a recommendation of the Immigration Service against granting the naturalization, it is never a contested trial in the usual understood sense, but it is rather an *ex parte* application for the grant of a privilege upon qualification for that privilege. And in the application the duty rests upon the applicant to make a full disclosure and, in particular, where questions are asked about a particular subject, to truthfully disclose and answer, and not to secure the privilege of naturalization by devious and false means.

To say that the statement from the restatement of judgments that "A judgment obtained merely by false or perjured testimony, or the production of false documents or even by conspiracy between the prevailing party and witnesses, is not open to later attack" (Appellant's Br. 17), applies to a case of an application for naturalization, is to invite applicants for naturalization, by fair means or foul, to conceal from the Immigration authorities any adverse material so long as it does not bear directly on a "jurisdictional" fact.

Conclusion.

It is respectfully submitted that the Findings, Conclusions and Judgment of the District Court denaturalizing the appellant should be affirmed.

LAUGHLIN E. WATERS,
United States Attorney,
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division,
ARLINE MARTIN,
Assistant U. S. Attorney,
Attorneys for Appellee.

APPENDIX A.

vernment's Exhibit 2-A and 2-B in Evidence, Being Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization.


FOLD O

FOLD


FOLD O

FOLD O


FOLD O

APPENDIX C.

Laughlin E. Waters
United States Attorney
Max F. Deutz
Assistant U.S. Attorney
Chief of Civil Division
Arline Martin
Assistant U.S. Attorney
600 Federal Building
Los Angeles 12, California
Telephone: Madison 5-7411
Attorneys for Plaintiff

United States District Court, Southern District of California, Central Division.

United States of America, Plaintiff, v. Peter Chaunt, also known as Ladislans Leitner, also known as Leslie Bela Leitner, Defendant. Civil 15907-WM.

Second Amended Complaint to Set Aside and Cancel Naturalization

Plaintiff, United States of America, complains of defendant and for causes of action alleges that:

FIRST CAUSE OF ACTION

(Concealment of Material Facts)

I

The plaintiff is a corporate sovereign, and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (Public Law No. 414; 82nd Congress), (8 U.S.C.A., Section 1451(a)],

II

The last known residence of the defendant is 310 M Washington Drive, Los Angeles, California, within th Southern District of California, Central Division, an within the jurisdiction of this Court.

III

On or about June 27, 1940, the defendant, Peter Chaunt also known as Ladislans Leitner, and also known as Leslie Bela Leitner, who was then an alien and a native of Hungary, filed a Petition for Naturalization in the United States District Court for the Eastern District of New York.

IV

On or about November 28, 1940, the aforesaid petition was granted by said Court, and on said date Certificate of Naturalization No. 4785200 was issued to the defendant.

V

The Order admitting defendant to citizenship, and said Certificate of Naturalization, issued as aforesaid, were procured by the defendant from said Court by ^ concealment of material facts, in that defendant, in the proceedings which led to his naturalization, ^ concealed the following material facts: (1) That prior to and at the time of filing said Petition for naturalization and at the time of his naturalization, defendant was an active member and officer of the Communist Party of the United States and had been since on or about the year 1926; (2) that prior to said naturalization the defendant had been arrested and charged with violation of the city ordinances of the City of New Haven, Connecticut as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of

[AM] intentional

[AM] intentionally

the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729 Disposition, "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harrangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances" Disposition, "Demurrer filed 12-27-29. Demurrer overruled—Whitaker 12-27-28, plea—not guilty, Found J.S."; (d) On or about April 7, 1930, defendant was arrested and charged in the Criminal Court of Common Please, New Haven, Connecticut, as follows: "Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, now here in Court, information makes that at the town of New Haven, within the County of New Haven, on the 11th day of March, 1930, Peter Chaunt of New Haven, with force and arms, did then and there disturb and break the peace by tumultuous and offensive carriage, noise and behavior, against the peace, of evil example, and contrary to the statute in such case made and provided; whereupon the attorney prays the advice of this Honorable Court in the premises"; that defendant pleaded not guilty on April 7, 1930, and disposition was "nolled" April 7, 1930"; (c) That on the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (3) that during the five

years immediately preceding the date of defendant's petition for naturalization defendant was not and did not behave as a person of good moral character by reason among other facts of the facts as herein alleged and the concealment thereof, as herein alleged, in violation of the fourth subdivision of Section 4 of said Naturalization Act of 1906, as amended.

VI

The facts so concealed, as alleged in paragraph V hereof, are material for the reason that they violate the requirements for naturalization as provided by the Nationality Act of 1906, as amended, and for the further reason that as a result of said concealment, the Immigration and Naturalization Service and the Court did not make a further investigation as to the nature and principles of the Communist Party of which defendant was a member, and did not make a full and proper investigation as to whether or not defendant suscribed to the principles of the Communist Party or whether defendant was or had behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, or whether or not defendant could in open court take oath of allegiance to the United States without any mental reservation or purpose of evasion, as required by Section 4, subdivisions 3, of the Nationality Act of 1906, as amended, and by Rule 8(c) of the Rules and Regulations of the Immigration and Naturalization Service, and, as a result of said concealment, said Immigration and Naturalization Service did not make a full and proper investigation as to whether defendant had all of the qualifications for citizenship required by the Nationality Act or 1906, as amended, and, as a result thereof, said Immigration and Naturalization Service made a recommendation to the Court that said Petition

for Naturalization be granted, and said Court granted said Petition for Naturalization.

VII

Before the filing of this Amended Complaint, an affidavit was executed by Maurice A. Roberts, an attorney of the Immigration and Naturalization Service, United States Department of Justice, showing good and sufficient cause for the institution of this proceeding under, and as required by, the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (8 U.S.C.A., Section 1451(a), to set aside and cancel the naturalization of said defendant, Peter Chaunt, as having been procured by concealment of material facts and by willful misrepresentation, which affidavit is attached hereto, marked EXHIBIT "A" and made a part hereof, the same as though set forth at length herein.

SECOND CAUSE OF ACTION

(Willful Misrepresentation)

I

Plaintiff repeats and realleges as a part of this cause of action each and all of the allegations contained in paragraphs I, II, III, IV and VII of the First Cause of Action, and makes them a part hereof as though set forth at this point.

II

Said order admitting defendant to citizenship and said Certificate of Naturalization were procured by defendant by willful misrepresentation in that defendant in the proceedings which lead to his naturalization (1) intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order," and no others, and in answer to an oral question propounded by Reuben E. Wilson, Nat-

uralization Examiner, as follows: "Have you ever belonged to any Communist, Nazi or Fascist organization," defendant intentionally and falsely answered "No," whereas, in truth and in fact, the defendant, from on or about the year 1926, had been an active member and officer of the Communist Party of the United States; (2) intentionally and falsely represented that during the five years immediately preceeding the date of his Petition for Naturalization defendant was, and behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, and intentionally and falsely represented that it was the defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, estate or sovereignty, and that it was his intention to bear true faith and allegiance to the United States of America and to support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic, whereas, in truth and in fact, by reason of defendant's membership in, and his knowledge of the nature and principles of the Communist Party, the defendant was not and had not behaved as a person attached to the principles of the Constitution of the United States or well disposed to the good order and happiness of the United States, and it was not defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and it was not his intention to bear true faith and allegiance to the United States of America or to support or defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; (3) intentionally and falsely represented that prior to said naturalization he had never been arrested or charged with violation of any law of the United States

or state or any city ordinance or traffic regulation, whereas in truth and in fact defendant had been arrested and charged with violation of the city ordinances of the City of New Haven, Connecticut, as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729, Disposition, "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town did make an oration, harrangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances" Disposition, "Demurrer filed 2-27-29. Demurrer overruled—Whitaker 12-27-28, plea—not guilty, Found J.S." (c) On or about April 7, 1930, defendant was arrested and charged in the Criminal Court of Common Pleas, New Haven Connecticut, as follows: "Edwin S. Pickett, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven, County, now here in Court, information makes that at the town of New Haven, within the County of New Haven, on the 11th day of March, 1930, Peter Chaunt of New Haven, with force and arms, did then and there disturb and break the peace by tumultuous and offensive carriage, noise and behavior, against the peace, of evil example, and contrary to the statute in such case made and provided; whereupon the attorney prays the advice of this Honorable Court in the premises"; that defendant pleaded not guilty on April 7, 1930, and disposition was 'nolled' April 7, 1930"; (d) That on the 11th day of

March, 1930, defendant was arrested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of the peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (4) Intentionally and falsely represented that during the five years immediately preceeding the date of defendant's Petition for Naturalization he was and had behaved as a person of good moral character, whereas, in truth and in fact, among other things, by reason of the intentional and false misrepresentations as herein alleged, defendant was not and had not behaved as a person of good moral character during said period.

III

That the Communist Party of the United States is an organization which at all times since 1926, as the said Peter Chaunt well knew, advised, advocated, *or* and [AM] taught the overthrow by force *or* and [AM] violence of the government of the United States; advised, advocated, *or* and[AM] taught the duty, necessity, *or* and[AM] propriety of the unlawful assaulting *or* and[AM] killing of any officer or officers of the government of the United States because of his or their official character; advised, advocated, *or* and[AM] taught the unlawful damage, injury *or* and[AM] destruction of property; advised, advocated, *or* and[AM] taught sabotage; wrote, circulated, distributed, printed, published, *or* and[AM] displayed, or caused to be written, circulated, distributed, printed, published, *or* and[AM] displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, *or* and[AM] display, written and printed matter which advised, advocated, *or* and[AM] taught the performance of the acts described hereinabove in this para-

graph; promoted influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

IV

That at all of the times above mentioned, as the said Peter Chaunt well knew, the Communist Party of the United States was a section of an international organization called "The Communist International" and that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

V

As a result of the intentional and willful misrepresentations by the defendant, as alleged in paragraph II hereof, the Immigration and Naturalization Service and the Court did not make a further investigation and did not make a full and proper investigation as to whether defendant had all of the qualifications for citizenship required by the Nationality Act of 1906, as amended, and as a result thereof said Immigration and Naturalization Service made a recommendation to the Court that said Petition for Naturalization be granted, and said Court granted said Petition for Naturalization.

WHEREFORE, plaintiff prays that:

1. The order of the United States District Court for the Eastern District of New York, dated on or about November 28, 1940, admitting defendant to citizenship, be revoked and set aside;

2. All official documents evidencing citizenship issued to defendant by virtue of the aforesaid Order, and particularly the original Certificate of Naturalization No.

4785200 and duplicate Certificate of Naturalization No. 4785200 be cancelled and declared null and void:

3. Defendant be forever restrained and enjoined from setting up and claiming any rights, privileges, or advantages whatsoever under said order or any official document evidencing citizenship by virtue of the aforesaid order;

4. Upon entry of final decree in this case, as heretofore prayed, that same be entered and spread upon the records of this Court, and that said defendant be required to forthwith surrender and deliver his said Certificate of Naturalization to the Clerk of this Court for Cancellation, and that the Clerk of this Court be further directed to transmit a certified copy of said final decree herein, cancelling such Certificate and setting aside said Order admitting defendant to citizenship, to the Attorney General of the United States, and to the Clerk of the United States District Court in and for the Eastern District of New York, with the directions that the same be entered upon the record in that Court, and that the original Certificate of Naturalization upon the records of Court in the Eastern District of New York be cancelled; and

5. Plaintiff have such other relief as to this Honorable Court may deem proper in the premises.

LAUGHLIN E. WATERS
United States Attorney
MAX F. DEUTZ
Assistant U. S. Attorney
Chief, Civil Division
ARLINE MARTIN
Assistant U. S. Attorney
s/ ARLINE MARTIN
ARLINE MARTIN
Attorneys for Plaintiff

EXHIBIT "A"

UNITED STATES OF AMERICA)
) ss. C-4785200
DISTRICT OF COLUMBIA)

Maurice A. Roberts, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That PETER CHAUNT filed a petition for naturalization in the United States District Court for the Eastern District of New York on June 27, 1940 and was admitted to citizenship by that court on November 28, 1940, receiving naturalization certificate No. 4785200.

(b) That in the proceedings which led to his naturalization, the said PETER CHAUNT alleged under oath:

(I) That he had never belonged to any Communist, Nazi or Fascist organization and that the only organization to which he had ever belonged was the fraternal benefit society of International Workers Order.

(II) That he fully believed in the form of government of the United States; and that he did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That he was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was his intention to re-

nounce absolutely and forever all allegiances and fidelity to any foreign prince, potentate, state, or sovereignty of which he was a subject or citizen. (IV) That he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that he would bear true faith and allegiance to the same; and that he took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said PETER CHAUNT as set forth in subparagraph 1 (b) were false and untrue.

(d) That the said PETER CHAUNT has been an active member and officer of the Communist Party of the United States, including the Workers (Communist) Party and other organizations affiliated with or controlled by the Communist Party of the United States since at least 1926.

(e) That the Communist Party of the United States is an organization which at all times since 1926, as the said PETER CHAUNT well knew:

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(III) Advised, advocated, or taught the unlawful damage, injury or destruction of property;

(IV) advised, advocate, or taught sabotage;

(V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 1(e), I, II, III and IV.

(VI) Promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialistic Republics.

(f) That at all of the times above mentioned, as the said PETER CHAUNT well knew, the Communist Party of the United States was a section of the international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organization were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That by reason of the foregoing, the said PETER CHAUNT at the time he applied for and obtained naturalization; was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegi-

ance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said PETER CHAUNT intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to his naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of his qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that his petition be granted; to preclude inquiry by the court concerning his qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act, 8 U.S.C. 1451(a), to set aside and cancel the naturalization of said PETER CHAUNT as having been procured by concealment of material facts and by wilful misrepresentation.

3. That the last known place of residence of the said PETER CHAUNT is 3305 West 34th Street, Cleveland, Ohio.

MAURICE A. ROBERTS
Attorney

Subscribed and sworn to at Washington in the District of Columbia this 6th day of May, 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d.1 of Title 8 of the Code of Federal Regulations to administer oaths.

ALBERT E. REITHEL(?)
Assistant General Consel

[Filed Apr. 21, 1955; Edmund L. Smith, Clerk; by Charles E. Jones, Deputy Clerk.]

APPENDIX D.

Margolis, McTernan and Branton
Attorneys at Law
112 West Ninth Street
Los Angeles 15, California
Phone VAndike 7153
Attorneys for Defendant.

In the United States District Court in and for the Southern District of California, Central Division.

United States of America, Plaintiff, v. Peter Chaunt, Defendant. No. 15,907-WM.

Answer to Second Amended Complaint

The defendant above-named, Peter Chaunt, hereby answers the second amended complaint herein as follows:

I

Admits the allegations of paragraphs I, II, III and IV of the first cause of action.

II

Generally denies each and all of the allegations of paragraph V of the first cause of action.

III

Generally denies the allegations of paragraph VI of the first cause of action and specifically denies that the Immigration and Naturalization Service reasonably relied solely upon facts supplied by the defendant in failing to make a further, full and proper investigation of defendant's qualifications for citizenship as alleged in paragraph VI thereof.

SECOND CAUSE OF ACTION

I

Defendant refers to and by this reference incorporates herein as if fully set forth his answers to the allegations of paragraphs I, II, III and IV of the first cause of action of said complaint.

II

Defendant generally denies the allegations of paragraph II of the second cause of action.

III

Defendant generally denies all of the allegations of paragraphs III and IV of the second cause of action and alleges that the same are and each of them is immaterial.

IV

Defendant generally denies the allegations of paragraph V of the second cause of action and specifically denies that the Immigration and Naturalization Service reasonably relied solely upon facts disclosed by the defendant in failing to make a further, full and proper investigation of defendant's qualifications for citizenship as alleged in paragraph V thereof.

AS AND FOR A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:

I

The second amended complaint in whole, and each of the causes of action thereof, fails to state a cause of action or claim upon which relief can be granted against this defendant.

As and for a Third, Separate and Affirmative Defense, Defendant Alleges:

I

The decree and certificate of naturalization referred to in paragraph IV of the first cause of action of the complaint is res judicata and conclusive of all matters and issues determined or determinable in the naturalization proceeding including all such issues pleaded in the second amended complaint.

As and for a Fourth, Separate and Affirmative Defense, Defendant Alleges:

I

The Court is without jurisdiction of the action in that Section 340 of the Immigration and Nationality Act of 1952 (8 U.S.C.A. 1451) under which the complaint is drawn (hereinafter referred to as "the statute") is unconstitutional and void both upon its face and as applied to the defendant in the following respects:

(a) That in providing for cancellation of a decree and judgment of naturalization a court of competent jurisdiction, after proceedings to which the United States was a party and from which no appeal was taken, the statute violates the separation of powers prescribed by the Constitution and denies defendant due process of law contrary to the guarantees of the Fifth Amendment thereto.

(b) That in authorizing cancellation of such a decree upon grounds not prescribed at the time of naturalization, the statute is an *ex post facto* law repugnant to Article I, Section 9, Chapter 3 of the Constitution of the United States.

(c) That as applied to the defendant under the circumstances alleged in the complaint the statute is an *ex post facto* law and a bill of attainder in violation of Article I, Section 9 of the Constitution.

(d) That the statute on its face is vague, ambiguous and uncertain, and fails to provide any clearly ascertainable standard of disclosure for the guidance of petitioners in naturalization proceedings, in violation of the due process clause of the Constitution.

(e) That in providing for deprivation of citizenship without the right of trial by jury the statute denies the defendant due process of law in violation of the Fifth Amendment to the Constitution.

(f) That the statute abridges liberty of speech, assemsembly, and association, and activities in furtherance thereof, in violation of the First Amendment to the Constitution.

WHEREFORE, defendant prays that plaintiff take nothing by its action herein, that the second amended complaint may be dismissed, and that the defendant may have judgment for his costs.

MARGOLIS, MCTERNAN AND BRANTON
By JOHN W. PORTER
John W. Porter
Attorneys for Defendant.

[Filed Nov. 7, 1955, Clerk U. S. District Court, Southern District of California. By Wayne Payne, Deputy Clerk.]

APPENDIX E.

Laughlin E. Waters
United States Attorney
Richard A. Lavine
Assistant U. S. Attorney
Chief of Civil Division
Arline Martin
Assistant U. S. Attorney
600 Federal Builting
Los Angeles 12, California
Telephone: MAdison 5-7411
Attorneys for Plaintiff

United States District Court for the Southern District of California, Central Division

United States of America, Plaintiff, v. Peter Chaunt, Defendant. Civil No. 15907-WM.

Findings of Fact, Conclusions of Law, and Judgment

The above entitled matter came on regularly for trial on the 5th day of March, 1957, and continued thereafter on the 6th, 7th and 8th days of March, and was continued thereafter to April 1, 1957, and trial was completed on that date, in the above entitled court, before the Honorable William C. Mathes, Judge presiding, without a jury, the plaintiff, United States of America, being represented by Laughlin E. Waters, United States Attorney, Richard A. Lavine, Arline Martin and James R. Dooley, Assistant United States Attorneys, the defendant being represented by his attorneys, Margolis, McTernan and Branton and John W. Porter, and evidence both oral and documentary having been presented, and the matter having been tried on its merits, and the Court having heard the arguments of counsel, and being fully advised in the

premises, and having on the 1st day of April, 1957, announced its findings and opinions in open court, now

[AM/hh Attys. 6 Clk. U. S. D. C. Atty Gen.]

makes its Findings of Fact, Conclusions of Law, and Judgment:

Findings of Fact
(First Cause of Action)

I

The plaintiff is a corporate sovereign, and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 (Public Law No. 414; 82nd Congress) [8 U.S.C.A. §1451(a)].

II

The last known residence of the defendant is 4812 Glenalbyn Drive, Los Angeles, California, within the Southern District of California, Central Division, and within the jurisdiction of this Court.

III

On or about June 27, 1940, the defendant, Peter Chaunt, also known as Ladislans Leitner, and also known as Leslie Bela Leitner, who was then an alien and a native of Hungary, filed a Petition for Naturalization in the United States District Court for the Eastern District of New York.

IV

On or about November 28, 1940, the aforesaid petition was granted by said court, and on said date Certificate of Naturalization No. 4785200 was issued to the defendant.

V

[Mathes, J.] establishing

There is clear, unequivocal and convincing evidence beyond all reasonable doubt that the order admitting defendant to citizenship, and said certificate of naturalization, issued as aforesaid, were procured by the defendant from said court by knowing, intentional, deliberate, designed, purposeful and willful concealment of material facts, in that defendant, in the proceedings which led to his naturalization, knowingly, intentionally, deliberately, designedly, purposely and willfully concealed the following material facts: (1) that prior to and at the time of filing said petition for naturalization and at the time of his naturalization, and subsequent thereto at least until the year 1952, defendant was an active member, officer and full-time paid functionary of the Communist Party of the United States and had been since on or about the year 1929; (2) that prior to said naturalization the defendant had been arrested and charged with violation of the city ordinances of the City of New Haven, Connecticut as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of the said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729 Disposition, "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town, did make an oration, harangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances" Disposition, "Demurrer

filed 12-27-29. Demurrer overruled—Whitaker 12-27-28, plea—not guilty, Found J. S."; (c) that on the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (d) that five years immediately preceding the [Mathes, J.] during the ^ date of defendant's petition for naturalization defendant was not and did not behave as a person of good moral character by reason among other facts of the facts as herein alleged and the concealment thereof, as herein alleged, in violation of the fourth subdivision of Section 4 of said Naturalization Act of 1906, as amended.

VI

The facts so concealed, as alleged in paragraph V hereof, are material for the reason that they violate the requirements for naturalization as provided by the Nationality Act of 1906, as amended, and for the further reason that as a result of said concealment, the Immigration and Naturalization Service and the court was foreclosed from making a further investigation as to whether or not defendant subscribed to the principles of the Communist Party or whether defendant was, or had behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, or whether or not defendant could in open court take oath of allegiance to the United States without any mental reservation or purpose of evasion, as required by Section 4, subdivision 3, of the Nationality Act of 1906, as amended, and by Rule 8(c) of the Rules and Regulations of the Immigration and Naturalization Service, and, as a result of said conceal-

ment, said Immigration and Naturalization Service did not make a full and proper investigation as to whether defendant had all of the qualifications for citizenship, including defendant's good moral character during the statutory period preceding naturalization, as required by the Nationality Act of 1906, as amended, and as a result thereof said Immigration and Naturalization Service made a recommendation to the court that said Petition for Naturalization be granted, and said court granted said Petition for Naturalization.

VII

Before the filing of this Amended Complaint, an affidavit was executed by Maurice A. Roberts, an attorney of the Immigration and Naturalization Service, United States Department of Justice, showing good and sufficient cause for the institution of this proceeding under, and as required by, the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 [8 U.S.C.A., 1451(a)], to set aside and cancel the naturalization of said defendant, Peter Chaunt, as having been procured by concealment of material facts and by willful misrepresentation; a copy of said affidavit was attached to the original Complaint herein and to the Second Amended Complaint herein, on which the action was tried, marked EXHIBIT "A", and the original of said affidavit was introduced in evidence as Plaintiff's Exhibit 36.

FINDINGS OF FACT

(Second Cause of Action)

I

The plaintiff is a corporate sovereign, and this action is brought pursuant to the direction of the Attorney General of the United States and under the provisions of Sections

340(a) of the Immigration and Nationality Act of 1952 (Public Law No. 414; 82nd Congress) [8 U.S.C. §1451(a)].

II

The last known residence of the defendant is 4812 Glenalbyn Drive, Los Angeles, California, within the Southern District of California, Central Division, and within the jurisdiction of this Court.

III

On or about June 27, 1940, the defendant, Peter Chaunt, also known as Ladislans Leitner, and also known as Leslie Bela Leitner, who was then an alien and a native of Hungary, filed a Petition for Naturalization in the United States District Court for the Eastern District of New York.

IV

On or about November 28, 1940, the aforesaid petition was granted by said court, and on said date Certificate of Naturalization No. 4785200 was issued to the defendant.

V

The evidence is clear, unequivocal and convincing, establishes [Mathes, J.]
and ∧ beyond all reasonable doubt, that said order admitting defendant to citizenship and said Certificate of Naturalization were procured by defendant by affirmative, fraudulent and willful misrepresentation, in that the defendant in the proceedings which lead to his naturalization (1) intentionally and falsely represented that the only organization to which he belonged was the "Fraternal Benefit Society of International Workers Order", and no others, and in answer to an oral question propounded by Reuben E. Wilson, Naturalization Examiner, as follows: "Do you believe in Communism, Fascism or

Nazism?" defendant intentionally and falsely answered "No", whereas, in truth and in fact, the defendant, from on or about the year 1926, had been an active member and officer of the Communist Party of the United States; (2) intentionally and falsely represented that during the five years immediately preceding the date of his Petition for Naturalization defendant was, and behaved as, a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, and intentionally and falsely represented that it was the defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, estate or sovereignty, and that it was his intention to bear true faith and allegiance to the United States of America and to support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic, whereas, in truth and in fact, by reason of defendant's membership in, and his knowledge of the nature and principles of the Communist Party, the defendant was not, and had not behaved as a person attached to the principles of the Constitution of the United States or well disposed to the good order and happiness of the United States, and it was not defendant's intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and it was not his intention to bear true faith and allegiance to the United States of America or to support or defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; (3) intentionally and falsely represented that prior to said naturalization he had never been arrested or charged with violation of any law of the United States or state or any city ordinance or traffic regulation, whereas in truth and in fact defendant had been

arrested and charged with violation of the city ordinances of the City of New Haven, Connecticut, as follows: (a) On or about July 30, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, of said city and town of New Haven, did then and there distribute in a public street, to wit: Ashmun Street, certain hand-bills against the peace of the State, of evil example, and contrary to the ordinance in such case made and provided. Ord. 729," Disposition, "Plea—not guilty—Discharged"; (b) On or about December 21, 1929, defendant was arrested on the charge that "at said city and town of New Haven, Peter Chaunt, temporarily of said city and town did make an oration, harangue, or other public demonstration in New Haven Green, outside of the churches. Pages 609 Charter and Ordinances" Disposition, "Demurrer filed 2-27-29. Demurrer overruled—Whitaker 12-27-28, plea—not guilty, Found J.S."; (c) That on the 11th day of March, 1930, defendant was arrested and charged at said city and town of New Haven that he "did commit, violate, Peter Chaunt, general breach of the peace"; "plea N.G., finding G, ordered to be imprisoned in New Haven County Jail and/or to pay fine of $25.00 to stand committed until judgment satisfied. Appealed"; (d) Intentionally and falsely represented that during the five years immediately preceding date of defendant's Petition for Naturalization he was and had behaved as a person of good moral character, whereas, in truth and in fact, among other things, by reason of the intentional and false misrepresentations as herein alleged, defendant was not and had not behaved as a person of good moral character during said period.

VI

The evidence is clear, unequivocal and convincing, and establishes beyond all reasonable doubt that the Commu-

nist Party of the United States is an organization which at all times since 1926, as the said Peter Chaunt well knew, advised, advocated and taught the necessity and the duty to overthrow by force and violence the government of the United States; wrote, circulated, distributed, printed, published and displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated and taught the performance of the acts described hereinabove in this paragraph; and promoted, influenced, and advocated the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

VII

The evidence is clear, unequivocal and convincing, and establishes [Mathes, J.]
^ beyond all reasonable doubt that at all of the times above mentioned, as the said Peter Chaunt well knew, the Communist Party of the United States was a section of an international organization called "The Communist International", and that decisions made by such organization were binding upon other Communist Partys, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

VIII

The evidence is clear, unequivocal and convincing, and establishes [Mathes, J.]
^ beyond all reasonable doubt that at all times above mentioned the defendant was attached to the principles of Marxism, Leninism, Stalinism and the Communist International, and the Communist Party of the United States, in-

cluding the objective of overthrowing the government of the United States of America by force and violence at the earliest time circumstances permit, and during all of the times above mentioned defendant felt and owed his entire loyalty and allegiance to the Communist Party, the Communist International and the Union of Soviet Socialist Republics, and at the time the defendant took the oath of renunciation and allegiance, as required by law in order to become a naturalized citizen of the United States of America, the defendant had no intention of renouncing his allegiance to Soviet Russia or to his native Hungary, and had no intention of giving any of his allegiance to the United States of America.

IX

As the result of the affirmative, fraudulent, intentional and willful misrepresentations by the defendant, as above found, the Immigration and Naturalization Service and the court were foreclosed from making any further investigation or any investigation which would have revealed the defendant's record of arrests, his Communist Party membership, and his poor moral character, and as a result of said misrepresentations the Immigration and Naturalization Service and the court did not make a further investigation as to whether defendant had all of the qualifications for citizenship required by the Nationality Act of 1906, as amended; and as a result thereof said Immigration and Naturalization Service made a recommendation to the court that said Petition for Naturalization be granted, and said court granted said Petition for Naturalization.

X

Before the filing of this Amended Complaint, an affidavit was executed by Maurice A. Roberts, an attorney of the

Immigration and Naturalization Service, United States Department of Justice, showing good and sufficient cause for the institution of this proceeding under, and as required by, the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. 1451(a)] to set aside and cancel the naturalization of said defendant, Peter Chaunt, as having been procured by concealment of material facts and by willful misrepresentation; a copy of said affidavit was attached to the original Complaint herein and to the Second Amended Complaint herein, on which the action was tried, marked EXHIBIT "A", and the original of said affidavit was introduced in evidence as Plaintiff's Exhibit 36.

CONCLUSIONS OF LAW

I

This Court has jurisdiction of plaintiff's First and Second Causes of Action as alleged in plaintiff's Second Amended Complaint under the provisions of Section 340(a) of the Immigration and Nationality Act of 1952 [8 U.S.C.A. 1451(a)].

II

The naturalization of the defendant was procured by concealment of material facts within the meaning of Section 340(a) of the Immigration and Nationality Act of 1952.

III

The naturalization of the defendant was procured by willful misrepresentation within the meaning of Section 340(a) of the Immigration and Nationality Act of 1952.

IV

The order of the United States District Court for the Eastern District of New York at Brooklyn New York,

dated November 28, 1940, admitting the defendant to citizenship, and the Certificate of Naturalization No. 4785200 issued by said court on the 28th day of November, 1940, were procured by concealment of material facts and by willful misrepresentations and the naturalization of the defendant was induced by the defendant's fraud and said naturalization is therefore rendered nugatory by the defendant's fraud.

V

The allegations contained in both the First and Second Causes of Action of plaintiff's Second Amended Complaint [Mathes, J.] , as hereinabove found, have been sustained ∧ by unequivocal, clear and convincing evidence beyond all reasonable doubt, and the prayer of said Second Amended Complaint should be granted and judgment in favor of the plaintiff and against the defendant as prayed for in said Second Amended Complaint should be entered accordingly, adjudging that the order of the court admitting defendant to citizenship be revoked and set aside; that all official documents evidencing citizenship be cancelled; that upon this judgment becoming final the defendant shall be required to surrender and deliver up his Certificate of Naturalization No. 478522 to the Clerk of the Court for cancellation; and that defendant be forever restrained and enjoined from setting up or claiming any rights, privileges or advantages whatsoever under said order or under any official document evidencing citizenship issued by virtue of the aforesaid order.

JUDGMENT

Pursuant to the Findings of Fact and Conclusions of Law herein,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the order of the United States District Court for the Eastern District of New York at Brooklyn, New York, made on November 28, 1950, admitting the defendant, Peter Chaunt, to citizenship of United States of America, be and the same is hereby revoked, set aside and cancelled.

2. The Certificate of Naturalization No. 4785200 issued to the defendant, Peter Chaunt, by the Clerk of the United States District Court for the Eastern District of New York at Brooklyn, New York, be and the same is hereby revoked, set aside and cancelled.

3. That a certified copy of this Judgment shall be transmitted by the Clerk of this Court to the United States District Court for the Eastern District of New York at Brooklyn, New York, which originally issued the said Certificate of Naturalization, and the Clerk of the said United States District Court for the Eastern District of New York, upon receipt of the said certified copy of this Judgment, shall enter the same of record and cancel said original certificate of naturalization upon the records of said court and notify the Attorney General of the entry of such order and of such cancellation.

4. That upon this judgment becoming final the defendant, Peter Chaunt, shall surrender his copy of said Certificate of Naturalization No. 4785200 to the Clerk of this Court for cancellation.

5. That the defendant, Peter Chaunt, upon this judgment becoming final, shall be thereafter enjoined from claiming or exercising any rights or privileges of citizenship granted by said Certificate of Naturalization No. 4785200 or said order admitting said defendant, Peter Chaunt, to ciitzenship.

Dated: April 20 1957.

(Sgd.) Wm. C. Mathes
United States District Judge.

Entered and Docketed April 24, 1957. Clerk U. S. District Ct. Southern District of Calif., by C. A. Simmons, Deputy Clerk.

Filed Apr. 22, 1957, Clerk, U. S. District Court Southern District of California, by C. A. Simmons, Deputy Clerk.

Lodged Apr. 12, 1957, Clerk, U. S. District Court Southern District of California, by C. A. Simmons, Deputy Clerk.

APPENDIX F.

U. S. v. PETER CHAUNT, No. 15907-WM

List of Exhibits

ovt's	Description	Identified	In Evidence	Page in Transcript
1	List of Exhibits			
1-A	Certd. copy — Complaint, City of New Haven, Conn. 7-30-29 Warrant of arrest under Ord. 729—Disposition: Not guilty. Discharged.	X	X	484
1-B	Certd. copy — Complaint, City of New Haven, Conn. 12-21-29 Warrant of arrest under p. 609 Charter & Ord. — Not Guilty — Demurrer filed; over-ruled.	X	X	484
1-C	Certd. copy of Demurrer to complaint under Ex. B dated 12-27-29.	X	X	484
1-D	Certd. copy of Complaint New Haven, Conn.—dated Mar. 11, 1930 City Ct. for Breach of Peace—Found Guilty $25.00 fine.	X	X	484
1-E	Appeal of Ju. in Ex. D to: Crim. Court of Common Pleas—Nolled Apr. 7, 1930.	X	X	484
2-A	Naturalization forms for Peter Chaunt as follows: Preliminary Form for Petition for Naturalization	X	X	35-42, 62, 96A 112, 206

Govt's	Description	Identified	In Evidence	Page in Transcript
2-B	Second page of Preliminary Form for Petition for Naturalization.	X	X	35-42 59-60 96A, 62 112, 20
2-C	Statement of Facts; attached to Preliminary Form for Petition for Naturalization.	X	X	36, 42-46 96A, 11
2-D	Instructions: Part of Preliminary Form for Petition for Naturalization.	X	X	36, 42-46 96A, 11
2-E	Additional information re residence—Part of Preliminary Form for Petition for Naturalization.	X	X	36-42 11
2-F	Petition for Naturalization (Triplicate).	X	X	13-35, 112, 20
2-G	Second page of (2-F)—Triplicate copy of Petition for Naturalization.	X	X	13-35, 52-59, 61-67, 71-72, 97-98, 112, 20
2-H	Duplicate copy of Petition with original signature of Chaunt & witness.	X	X	47, 11
2-I	Certificate of Admission of Alien.	X	X	47, 73, 11
2-J	Certd. copies of: Certificate of Arrival; original Petition for Naturalization; Oath of Allegiance.	X	X	46, 11

Govt's	Description	Identified	In Evidence	Page in Transcript
3	Duplicate of photo of Peter Chaunt taken from Certificate of Naturalization.			
4	Communist Party of U. S. A. Membership book for Alex Feher, signed by Peter Chaunt.	X	X	193-197, 301, 327, 535
5	Communist Party of U. S. Membership book of Frank Hunter, signed by Peter Chaunt.	X	X	193-197, 326-327, 535
6	Communist Party of U. S. A. Membership Book of Wm. Haines, signed by Peter Chaunt.	X	X	194-197, 327, 535
7	Communist Party of U. S. A. Membership book of John Wren, signed by Peter Chaunt.	X	X	194-197, 327, 535
8	Print from Microfilm of page 2, Daily Worker for Wed. Jan. 22, 1930 w/article "Lenin Memorial Meets" (see col. 3, last paragraph).	X	X	414, 415, 421, 425
9	Microfilm print page 3, Daily Worker, Tues., June 12, 1934 w/article "800 St. Louis Jobless (see paragraph 5).	X	X	414

Govt's	Description	Identified	In Evidence	Page in Transcript
10	Microfilm print, page 1—Daily Worker, Thurs., May 17, 1934 w/article "Thugs Kidnap, Beat Packers (last paragraph).	X	X	410-4
11	Microfilm print, page 3—Daily Worker, Fr. Jan. 23, 1931, w/article "Little Rock, Ark. Active in Section" (see par. 4—"Dist. 4 scores indifference").	X	X	411-4
12	Microfilm print, page 3—Daily Worker, Sat. June 21, 1930 w/article "For Offensive Strategy" by Peter Chaunt, Dist. Organizer, Dist. 15.	X	X	409,41
13	Microfilm print—pp. 1 & 3, Daily Worker—Mond. Feb. 10, 1930 w/article "Jobless Rally in Conn." (par. 3, p. 1; last paragraph p. 3).	X	X	413-414, 429, 432-43
14	Original of Duplicate Certificate of Naturalization No. 4785200 with photo & signature of Peter Chaunt.	X	X	72-73, 192-197 11
15	3-5-55 Letter New Haven Prosecutor re City Ord. 729 of 1929 and page 609 of New Haven Charter & Ordinance.	X	X	48

ovt's	Description	Identified	In Evidence	Page in Transcript
5	Pamphlet—The Communist Party In Action by Alex Bittelman. 2d ptg. Sept., 1932.	X	X	402, 404
7	Leninism by Joseph Stalin —Vol. 19—Little Lenin Library.	X	X	364, 353, 516
8	Foundations of Leninism by Joseph Stalin—vol. 18 —Little Lenin Library.	X	X	347, 364, 369-370, 353
9	The Communist Party—A Manual on Organization by J. Peters.	X	X	369-370, 402, 404
0	Why Communism: Plain Talks on Vital Problems by M. J. Olgin. Pub. Dec. '33.	X	X	404
1	The Struggle Against Imperialist War & The Tasks of the Communists—Resolutions Sixth World Congress.	X	X	404
2	The Way Out—A Program for Am. Labor—Prin. Resolutions Adopted by 8th Convention—in 1934—Pub. 1934.			403
3	Stalin's Speeches On The American Communist Party Pub. May, 1929.	X	X	402, 404

Govt's	Description	Identified	In Evidence	Page in Transcript
24	Program of The Communist International—pub. 1936.	X	X	404
25	The Communist Manifesto by Marx & Engels.	X	X	404
26	The Twenty-One Conditions of Admission into the Communist International by O. Piatnisky.	X	X	394, 401 395
27	State & Revolution by V. I. Lenin—Little Lenin Lib. —pub. 1932.	X	X	347, 364-369, 35
28	Left-Wing Communism, an Infantile Disorder by V. I. Lenin.	X	X	349, 364-371, 35
29	Thesis & Resolutions of 7th Natl. Convention C. P. Mar.-April, 1930.	X		403
30	Resolutions of 9th Convention of C. P. June, 1936.	X	X	404
31	Resolutions of 10th Natl. Convention C. P. May, 1938.	X	X	301, 40
32	1938 Constitution of C. P. as adopted at 10th Natl. Convention.	X	X	402, 40
33	1938 Constitution of C. P. as amended in 1940.	X	X	403-40
34	Stalin — Foundations of Leninism — On the Problem of Leninism.	X	X	351, 35

ovt's	Description	Identified	In Evidence	Page in Transcript
5	Pre-Trial Stipulation.	X	X	11, 543
6	Affidavit Showing Good cause, filed Oct. 1, 1953 & attached to original complaint.	X	X	68-69, 99
6-a	Original Affidavit of Maurice Roberts showing good cause.	X	X	100
7	Newspaper "Columbian Missourian" 7-3-33	X	X	216-218
8	Original Statement of Wit. Kalke—20 pp. & attached Statements: Ex. A—2 pp. & Ex. B—6 pp., submitted to Court in camera.	X	Sealed & not made available to defendant.	
8-a	Photostat of Ex. 38 with names of all persons excised.	X	20-page statement & 2-page Ex. A as excised, made available to defendant. Ex. B sealed & not disclosed to defendant.	

List of Defendant's Exhibits.

Deft's	Description	Identified	In Evidence	Page Transcript
A	"The Communist Trials and the American Tradition, Expert Testimony in Force and Violence," by John Summerville, Ph.D.	X	X	511
A-1	Letter by Dr. Summerville with reference to Exhibit A.	X	X	315
B	Deposition of Calvin Derringer taken February 7, 1956.	X	X	83, 9 95-9
C	Affidavit of Kenneth Kalke.	X		137
D	American Magazine for April, 1940.	X		314, 3
E	Sworn Statement of Manning Johnson dated Oct. 9, 1950.	X	X portion of statement receiv in evidence.	5